Supreme Court, U. S.
FILED
MAY 13 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-657

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO AND UNITED STEELWORKERS OF AMERICA, AFL-CIO,

Petitioners,

v.

WILLIAM J. USERY, Secretary of Labor,

Respondent

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petition for Certiorari Filed November 3, 1975
Certiorari Granted February 23, 1976

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* The Opinion and Judgment of the United States Court of Appeals for the Seventh Circuit is reprinted in the Appendix to the Petition for Writ of Certiorari, beginning at page 1a. The Decision and Order of the United States District Court for the Southern District of Indiana is reprinted in the Appendix to the Petition for Writ of Certiorari, beginning at page 17a.

Relevant Docket Entries in the Proceedings Below

Nov. 23, 1970, Complaint filed. Summons issued.

Feb. 23, 1971, U.S. Steelworkers moves to intervene as a party deft. Also files a Motion for enlargement of time.

Mar. 10, 1971, Motion to Intervene Granted. United Steelworkers of America, AFL-CIO-CLC made a party defendant pursuant to Rule 24(a) F.R. Civ. P.

Aug. 17, 1971, Defts file answer to pltf's complaint, first defense and second defense.

Apr. 27, 1973, Parties file stipulation of facts.

May 10, 1973, This cause came on before the Court for trial without the intervention of a jury. . . . Plaintiff rests. . . . Defendant rests. . . . Court now takes this cause under advisement. . . .

Apr. 30, 1974, Court enters Memorandum of Opinion and plaintiff's complaint is hereby DISMISSED.

June 26, 1974, Plaintiff files notice of appeal.

Aug. 5, 1975, Judgment of the United States Court of Appeals for the Seventh Circuit reversing the order of the district court and entering judgment for the pltf.

Nov. 3, 1975, Petition for writ of certiorari and record filed.

Feb. 23, 1976, Petition GRANTED.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

* * *

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,

Plaintiff,

vs.

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

Defendant.

COMPLAINT

I

Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 *et seq.*, 29 U.S.C. 401 *et seq.*), hereinafter referred to as the Act.

II

Jurisdiction of this action is conferred upon the Court by section 402(b) of the Act (29 U.S.C. 482(b)).

III

Defendant is, and at all times relevant to this action has been, an unincorporated association maintaining its principal office at 625 North 13th Street, Vigo County, Terre Haute, Indiana, within the jurisdiction of this Court.

IV

Defendant is, and at all times relevant to this action, has been, a local labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j) and 401(b) of the Act (29 U.S.C. 402(i), 402(j) and 481(b)).

V

Defendant is, and at all times relevant to this action has been, chartered by and subordinate to the United Steelworkers of America, AFL-CIO-CLC, hereinafter referred to as the International, an international labor organization engaged in an industry affecting commerce within the meaning of section 3(i) and 3(j) of the Act (29 U.S.C. 402(i) and 402(j)).

VI

Defendant, purporting to Act pursuant to and in accordance with the Constitution of the International and its own Constitution, conducted a nomination of officers on May 17, 1970, and an election of officers on June 22, 1970, which nominations and election were subject to the provisions of Title IV of the Act (29 U.S.C. 481 *et seq.*).

VII

On June 23, 1970, Bernard G. Frye, a member in good standing filed a written protest to the May 17, 1970 nomination and the June 22, 1970 election of officers with defendant's Recording Secretary. This protest was heard and rejected by the defendant's membership at a regular meeting conducted on July 19, 1970. By letter dated July 22, 1970, Frye appealed this decision to the International. By letter dated September 3, 1970, Frye was informed by the International that a Commission had been appointed to investigate his complaint. By letter dated September 23, 1970, having invoked the remedies available under the International Constitution for three calendar months following the election without receiving a final decision, Bernard Frye, acting pursuant to and in accordance with section 402(a) of the Act (29 U.S.C. 482(a)), filed a complaint with the plaintiff.

VIII

Plaintiff investigated the complaint pursuant to section 402(b) of the Act (29 U.S.C. 482(b)), and as a result of the facts shown by his investigation, found probable cause to believe that violations of Title IV of the Act occurred during the conduct of the defendant's nomination and election which had not been remedied at the time of institution of this action.

IX

The following violations of section 401 of the Act (29 U.S.C. 481) occurred in the conduct of said election:

(a) Section 401(b) of the Act (29 U.S.C. 481(b)) was violated in that defendant failed to elect its officers by secret ballot among the members in good standing.

(b) Section 401(e) of the Act (29 U.S.C. 481(e)) was violated in that;

(1) Members in good standing were denied the right to be candidates and to hold office by the imposition of an unreasonable qualification; and

(2) Members in good standing were denied the right to vote for and otherwise support the candidates of their choice.

X

The violations of section 401 of the Act (29 U.S.C. 481) found and alleged above may have affected the outcome of defendant's June 22, 1970 election.

WHEREFORE, plaintiff prays for judgment:

(a) declaring the nomination conducted on May 17, 1970, and the election conducted on June 22, 1970, to be null and void;

(b) directing a new nomination and election for all offices under the supervision of the plaintiff;

(c) for the costs of this action; and

(d) for such other relief as may be appropriate.

PETER G. NASH
Solicitor of Labor

GEORGE T. AVERY
Associate Solicitor

HERMAN GRANT
Regional Solicitor

ROBERT YETMAN
Attorney

U. S. DEPARTMENT OF LABOR
Of Counsel

WILLIAM D. RUCKELSHAUS
Assistant Attorney General

United States Attorney

HARLAND F. LEATHERS
Attorney, Department of Justice

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

Civil Action
No. Th 70-C-117

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,

Plaintiff,

vs.

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

Defendant.

MOTION TO INTERVENE

United Steelworkers of America, AFL-CIO-CLC, moves pursuant to Rule 24(a), F.R.Civ. P., to intervene in this action as a party defendant, and in support thereof shows as follows:

1. Movant is an International Union, with whom more than 3,000 local unions are affiliated.

2. Movant's International Constitution contains rules and procedures governing the nominations and election of officers in each of its affiliated local unions, which must be followed by each of said local unions.

3. Defendant is a local union affiliated with movant, and as such was required to implement the "meeting attendance" requirement contained in movant's International Constitution.

4. Movant has been informally advised by Plaintiff that Paragraph IX of the complaint herein is directed at, and will challenge, the validity of said "meeting attendance" requirement.

5. Movant therefore has a direct interest in the outcome of this action, for a decision favorable to Plaintiff would cast doubt on the validity of this provision of movant's International Constitution, while a decision favorable to Defendant would vindicate this provision of movant's International Constitution.

WHEREFORE, movant prays that this motion be granted and that United Steelworkers of America, AFL-CIO, be granted intervention as a party defendant.

Respectfully submitted,

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC

A. E. LAWSON
BERNARD KLEIMAN
1500 Commonwealth Building
Pittsburgh, Pennsylvania 15222

MICHAEL H. GOTTESMAN
1000 Connecticut Avenue, N. W.
Washington, D. C. 20036

KEITH C. REESE
Rocap, Rocap, Reese & Young
708 Union Federal Building
Indianapolis, Indiana 46204

Attorneys for Defendant

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF INDIANA

TERRE HAUTE DIVISION

Civil Action
No. Th 70-C-117

PETER J. BRENNAN, Secretary of Labor, United States Department of Labor,
[Successor to JAMES D. HODGSON, Resigned]

Plaintiff,

v.

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
AND
UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

Defendants.

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the plaintiff and defendants, acting through their respective attorneys, that at all times mentioned herein, the following facts are true and may be accepted as true without further proof for the purposes of trial and hearing on the complaint and answer thereto in the above-mentioned cause, and that this stipulation may be admitted in evidence.

1. Defendant, Local 3489, United Steelworkers of America, AFL-CIO, hereinafter referred to as defendant Local, is, and at all times relevant to this action has been, an unincorporated association, maintaining its principle offices at 625 North 13th Street, Terre Haute, Indiana, within the jurisdiction of this court, and defendant Local is and has been a local "labor organization" engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j), and 401(b) of the Act.

2. Defendant Local is, and at all times relevant to this action has been, chartered by and subordinate to the defendant United Steelworkers of America, AFL-CIO, hereinafter referred to as defendant International, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i) and 3(j) of the Act.

3. Defendant Local was chartered by defendant International and had approximately 660 members as of June, 1970, all of whom were members in good standing eligible to vote in the election of Local union officers conducted by defendant Local on June 22, 1970. The membership of defendant Local is comprised exclusively of production and maintenance employees of Stran Steel Corporation at its Terre Haute, Indiana plant.

4. (a) Attached hereto as Exhibit A and made a part hereof is a copy of the Constitution of defendant International, adopted on August 22, 1968.

(b) Attached hereto as Exhibit B and made a part hereof is a true copy of the Local Union Elections Manual, as amended January 1967, of defendant International.

(c) Attached hereto as Exhibit C and made a part hereof is a true copy of the standard By-Laws for Local Unions, as amended January, 1967, adopted by defendant Local pursuant to Article VII, Section 5 of the International Constitution, adopted August 22, 1968.

4. Defendant Local is, and at all times relevant to this action has been, conducting its affairs under the International Constitution, adopted August 22, 1968, referred to as Exhibit A in paragraph 3(a) hereof, the Local Union Elections Manual, referred to in paragraph 3(b) hereof, and the standard By-Laws for Local Unions, referred to in paragraph 3(c) hereof. The election provisions of the aforesaid International Constitution, adopted August 22, 1968, the Local Union Elections Manual, and standard By-Laws for Local Unions were, and are now, subject to the provisions of Title IV of the Act.

5. With regard to eligibility to be a candidate to hold office, and with regard to the terms of office:

(a) Article VII, Section 9 of the International Constitution adopted August 22, 1968, referred to as Exhibit (A) in paragraph 3(a) hereof, provides, in pertinent part, as follows:

> No member shall be eligible for election as a Local Union officer or Grievance Committeeman unless
>
> * * *
>
> (c) He had attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1970, election, unless his Union activities or working hours prevented his attendance.

(b) Article VII, Section 8 of the International Constitution adopted August 22, 1968, referred to as Exhibit A in paragraph 3(a) hereof, provided:

> Section 8. All Local Union Officers and Grievance Committeemen shall be elected for a term of three (3) years at the last meeting in June commencing June, 1970, by a plurality vote of the members participating in a referendum vote * * *.

(c) Article VII, Section 9 of the Local Union Elections Manual, referred to as Exhibit B in paragraph 3(b) hereof, provides, in pertinent part, as follows:

> Section 9. No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless
>
> * * *
>
> (c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1967, election, unless his Union activities or working hours prevented his attendance.

(d) Article IV, Section 5 of the standard By-Laws for Local Unions referred to as Exhibit C in paragraph 3(c) hereof, provides, in pertinent part, as follows:

> No member shall be eligible for election as an Officer or Grievance Committeeman unless
>
> * * *
>
> (c) He has attended at least one-half of the regular meetings of his Local Union for 36 months previous to the election, unless his Union activities or working hours prevented his attendance.

6. The meeting attendance requirement, as set forth in the International Constitution, referred to as Exhibit A in paragraph 3(a) hereof, the Local Union Elections Manual, referred to as

Exhibit B in paragraph 3(b) hereof, and the standard By-Laws for Local Unions, referred to as Exhibit C in paragraph 3(c) hereof are applicable to and binding upon each of the thirty-seven hundred (3,700) local unions chartered by the defendant International Union.

7. The membership of defendant Local 3489 is composed exclusively of the production and maintenance employees of the Stran Steel Corporation situated at Terre Haute, Indiana. Throughout the period from May, 1967 to June, 1970, the employees at the aforesaid plant regularly worked Monday through Friday, inclusive, on three shifts. All employees generally worked the same shift without rotating, unless their jobs were changed during the three-year period.

8. (a) Pursuant to the provisions of the International Constitution, Local Union Elections Manual, and standard By-Laws for Local Unions then applicable, to have been eligible as a candidate in defendant Local's June 22, 1970 election, a member must: (a) have been in continuous good standing for a period of twenty-four (24) months immediately preceding the election; (b) be employed in the Terre Haute, Indiana plant of the Stran Steel Corporation; and (c) have attended at least eighteen (18) of the regular meetings held by defendant Local in the thirty-six (36) months preceding the election (June, 1970), unless his Union activities or working hours prevented his attendance. No credit is ever given for meetings missed for any reason other than working hours (or Union activities).

(b) The defendant Local held nominations for office on May 17, 1970, and an election of officers on June 22, 1970. The nominations and election were subject to Title IV of the Act.

9. (a) During the period from June, 1967 to May, 1970, the defendant Local conducted 36 regular monthly meetings at the union hall located at 625 North 13th Street, Terre Haute, Indiana. The hall is located approximately three miles from the Stran Steel plant, within a ten minute automobile ride from the plant.

(b) From January, 1967 through February, 1970, split meetings were held monthly at the union hall, 625 North 13th Street, Terre Haute, Indiana, on both the second Wednesday of every month at 4:30 p.m., and on the second Thursday of every month at 1:30

p.m. Commencing in March, 1970, only one meeting was held on the third Sunday afternoon of each month.

(c) Attendance at defendant Local's monthly meeting averaged 47 members per meeting.

10. Prior to defendant Local's nomination meeting on May 17, 1970, Clifford Baker, then Recording Secretary, compiled a list of 22 names from the Local's attendance register, which list included the names of all those Local Union members who had attended at least 18 of the past 36 monthly meetings, which persons were thus eligible to be nominated as candidates for a Local Union office at the forthcoming nomination meeting and eligible to hold union office. Attached hereto, made a part hereof, and marked Exhibit D is a true and correct copy of the aforesaid list, which was posted at the union hall prior to the May 17, 1970, nomination meeting.

11. Of the 22 Local members described in paragraph 10 hereof who were eligible for union office, ten were incumbent officers of defendant Local, as follows:

President, W. Uzzell	Trustees: R. Brown
Vice President, R. Satz	E. Hoffman
Recording Secretary, C. Baker	B. Brackall
Financial Secretary, G. Layman	Guide, R. Dayhuff
Treasurer, J. Krischak	Guard, R. Erickson

12. (a) On May 17, 1970, defendant Local conducted a meeting for the purpose of nominating candidates. At this meeting a total of 53 nominations of members were made for the nine offices as set out below. The following candidates were nominated:

President:	Vice President:
W. Uzzell	P. Eickelman
B. Frye	R. Satz
J. Forsythe	H. McCloud
P. Eickelman	B. King
R. Satz	M. Mahoney
	D. Ross

Recording Secretary:	Financial Secretary:
M. Mahoney	G. Layman
C. Baker	D. Ross
G. Layman	D. Jones
P. Eickelman	B. Frye

Treasurer:
J. Krischak
R. Satz
P. Eickelman
D. Ross

Trustees
R. Brown
E. Hoffman
B. Brackall
R. Dayhuff
F. Blade
J. Powell, Jr.
J. Krischak

Guard:
R. Erickson
H. Sessions

Grievance Committee:
F. Blade
C. Jett
M. Mahoney
R. Dayhuff
J. Powell, Sr.
G. Layman
H. McCloud
J. Forsythe
B. King
B. Roth
D. Jones
P. Lebaney
S. Geisert
B. Frye
B. Weiger
J. Krischak

Guide:
R. Dayhuff
H. McCloud
C. Hoffman
W. Larue
T. Clinkenbeard

(b) Of the aforementioned nominees, nineteen (19) persons declined thirty (30) nominations as follows:

President:
P. Eickelman
R. Satz

Vice President:
R. Satz
H. McCloud
B. King
M. Mahoney
D. Ross

Recording Secretary:
C. Baker
G. Layman
P. Eickelman

Financial Secretary:
D. Ross
B. Frye

Treasurer:
J. Krischak
R. Satz
P. Eickelman

Trustees:
J. Powell, Jr.
J. Krischak

Grievance Committee:
C. Jett
G. Layman
B. Roth
B. Weiger
R. Dayhuff
H. McCloud
S. Geisert
J. Krischak

Guard:
H. Sessions

Guide:
R. Dayhuff
C. Hoffman
H. McCloud
T. Clinkenbeard

Since the above-named individuals declined nominations, the Election Committee which was thereafter constituted, as hereinafter described in paragraphs 12(d) through 12(f) hereof, did not decide any questions concerning their eligibility to be a candidate and to hold office.

(c) Of the aforementioned nominees, the following were incumbent officers of defendant Local Union 3489 for the period from June, 1967 to June, 1970:

President: Willis Uzzell
Financial Secretary: Gerald Layman
Trustees:
Robert Brown
Chester Hoffman
Richard Dayhuff
Guard: Roy Erickson

(d) After the nomination of candidates was completed nominations were taken for the position of election teller to conduct the election of June 22, 1970. The following candidates were nominated:

ELECTION COMMITTEE

H. McCloud
J. Krischak
V. Batson
J. McGow
D. Ross
J. Doran
J. Tyler
C. Baker
C. Hoffman

(e) The following candidates for the position of election teller declined:

J. Krischak
V. Batson
D. Ross
C. Hoffman

(f) An election for the position of election teller was held, and the following were elected:

C. Baker
H. McCloud
J. Tyler

13. Following the nomination meeting of May 17, 1970, David L. Jones and B. Brackall were informed that they were ineligible for union office because they had attended an insufficient number of Union meetings (David L. Jones had attended three meetings; B. Brackall had attended 16 meetings).

14. In compiling the list of eligible candidates referred to in paragraph 10 hereof, defendant Local did not request work records kept by the employer, Stran Steel Corporation, nor had it ever been the policy of the Union to check work time credits (which may satisfy the meeting attendance requirement) unless a nominee or member so requests. No requests of this nature have ever been made.

15. The following persons nominated at the nominations meeting of May 17, 1970, were declared eligible solely on the basis of having actually attended eighteen (18) or more meetings:

President:
W. Uzzell
B. Frye
J. Forsythe
Vice President: P. Eickelman
Recording Secretary: M. Mahoney
Financial Secretary: G. Layman
Treasurer: D. Ross
Trustees:
R. Brown
E. Hoffman
R. Dayhuff
F. Blade

Grievance Committee:
F. Blade
M. Mahoney
J. Powell, Sr.
J. Forsythe
B. King
P. Lebaney
B. Frye

Guard: R. Erickson

Guide: No eligible candidate

16. While, as indicated in paragraph 10 hereof, W. Larue had not attended at least 18 meetings, he was permitted to run for the office of Guide because of the long standing custom of defendant Local that if there was no eligible candidate for a particular office, the office could then be filled by a non-eligible member.

17. (a) The Election Committee conducted the balloting in the election of June 22, 1970, at the union hall meeting room at 625 North 13th Street, Terre Haute, Indiana. Said meeting room was approximately 60′ X 20′ and had one entrance in the front thereof and one exit at the rear. The ballot box was located on a long counter inside the meeting room in the back of the front room of the hall.

(b) The Election Committee, composed of H. McCloud, J. Tyler, and C. Baker were in charge of conducting the election. At least two of them were present at all times with half hour lunch periods taken on a staggered basis. They were not assisted by any observers.

(c) The Election Committee did not prepare a list of members eligible to vote. Instead, for the purpose of determining eligibility of the voters, the Election Committee obtained from Stran Steel Corporation a monthly seniority list which was utilized for this purpose.

(d) Defendant estimates that approximately one vote was cast each three minutes. Further, there may have been as many as 50 voters awaiting the opportunity to cast their ballots at approximately 4:00 to 4:30 p.m.

(e) In all, 249 ballots were cast.

18. Attached hereto, made a part hereof, and marked Exhibit E is a true and correct copy of a ballot used at defendant Local's June 22, 1970, election.

19. At the termination of the voting period, the Election Committee sealed the ballot box and tabulated the ballots.

20. The Election Committee published the following results:

Candidate	*Number of Votes*
President	
Willis Uzzell (Elected)	154
Russell Forsythe	16
Bernard Frye	79
Vice President (Unopposed)	
Paul Eickelman (Elected)	228
Recording Secretary (Unopposed)	
Mike Mahoney (Elected)	186
Financial Secretary (Unopposed)	
Gerald Layman (Elected)	214
Treasurer (Unopposed)	
Don Ross (Elected)	211
Trustees	
Robert Brown (Elected)	212
Chester Hoffman (Elected)	218
Richard Dayhuff (Elected)	204
Fred Blade	41
Guard (Unopposed)	
Roy Erickson (Elected)	204
Guide (Unopposed)	
Wayne Larew (Elected)	192

21. After the conduct of the election, Bernard Frye, a member in good standing who had been nominated for the Presidency, filed a timely written protest (letter dated June 23, 1970) with the defendant Local. A true copy of that letter is attached hereto as Exhibit F and made a part hereof. In his letter, Frye, *inter alia,* protested the reasonableness of the requirement of the International Constitution that candidates for local union office attend one-half

of the regular meetings held in the thirty-six (36) months prior to the election, and that there were no voting booths to have a "secret ballot" election, resulting in members using walls, chairs, and tables to vote, and in that persons marking ballots could be seen by others.

22. The defendant local denied Frye's protest and he appealed the decision to the Executive Board of the Defendant International (letter dated July 19, 1970) in accordance with the International Constitution. A true copy of that letter is attached hereto as Exhibit G and made a part hereof. The International Executive Board voted to withhold action on the appeal on March 22, 1971, after a hearing had been conducted by an International Commission appointed to hear Frye's appeal. An International Commission was appointed and a hearing was held on September 8, 1970. On September 23, 1970, Frye filed a written complaint with the Secretary of Labor, *inter alia,* challenging the reasonableness of the Defendant International's meeting attendance requirement, and defendant Local's failure to have voting booths in order to conduct a secret ballot election. A true copy of the written complaint is attached hereto as Exhibit H and made a part hereof.

23. On October 15, 1970, the International Commission prepared and submitted its final decision on member Frye's appeal to the International Executive Board.

24. The Steel Workers Organizing Committee (hereafter "SWOC"), an organization representing steel industry employees, was formed in 1936 and held its first Convention in December 1937. The rules governing convention representation and selection of delegates provided that in order to be eligible to act as a delegate a member must be "a regular attendant of the meetings of his lodge." At the Convention, SWOC formulated Rules and Methods of Procedure to govern the affairs of lodges. These rules did not require attendance at meetings as a qualification on the right to seek and hold local union office. No such requirement was adopted at the 1940 Convention. (While agreeing to the accuracy of these facts, defendant Steelworkers is of the view that they are not relevant here.)

25. In 1942, SWOC was disbanded and in its place the United Steelworkers of America (hereafter "the Steelworkers") was established. Under the Steelworkers Constitution, the International President has the authority to appoint, prior to the opening date

of the Convention, such committees as are necessary to conduct the affairs of the International Convention, subject to the approval of the Convention (Article IV, Section 8). Among the committees uniformly appointed by the President is the Constitutional Committee.

26. Pursuant to the provisions of the Constitution (Article IV, Section 8), this Committee meets prior to the opening of the Convention and considers all resolutions for amendments to the Constitution previously submitted by local unions or recommended by the International Executive Board. Thus, Article VI ("Conventions"), Section 12 provides:

> All Local Union resolutions to be considered by the International Convention must be adopted by the Local Union and shall be sent to the International Secretary-Treasurer. They must be in his hands not later than ten (10) days prior to the convening of the International Convention. The International Secretary-Treasurer shall submit all Local Union resolutions and any recommendations of the International Executive Board to the chairmen of the appropriate committees.

27. The members of the Constitutional Committee, as noted, are appointed by the International President from among the delegates "elected at an official meeting of a Local Union or by referendum ballot election, after the Call for the International Convention is received and has been read to the Local Union." (Article VI, Section 10).

28. The Steelworkers adopts a Constitution at each of its biannual Conventions. The initial action with respect to amendments or revisions to the Constitution takes place within the Constitutional Committee. That body receives all resolutions submitted by Local Unions and any recommendations of the International Executive Board concerning suggested amendments to the Constitution. The Committee then discusses, debates and acts upon the proposed amendments by submitting a report to the Convention recommending whether the Constitution should or should not be amended with respect to each of the specific resolutions submitted by any Local Union or recommended by the International Executive Board. The report of the Committee does not set forth the reasons for its recommended actions.

Thereafter, the report of the Committee is presented to the Convention and acted upon by the delegates, with or without debate as the case may be. The Constitution may be amended only by majority vote at the Convention (Article XIX).

The meetings of the Constitutional Committee, like all other Committees which function in connection with the Convention, are not transcribed. Accordingly, there is no written record of what discussions were had within the Constitutional Committee either with respect to the reasons for adopting a meeting attendance rule initially in 1942 or the subsequent modifications of that rule as described below.

The formal Convention proceedings, however, are transcribed and what follows is a brief description tracing the historic development of the meeting attendance rule as reflected in said formal Convention proceedings.

29. In May 1942 at its first Convention, the Steelworkers adopted a Constitution. Article VII, Section 9(c) of this Constitution provided that to be eligible as a candidate for local union office a member must have

> attended at least one-half of the meetings of his local union for six months previous to the election unless his union activities or working hours prevented his attendance.

Article VI, Section 7(b) of the Constitution imposed a similar requirement on candidates for election as delegates. In the formal Convention Proceedings no reasons were cited for the meeting attendance requirement to hold local union office and there was no debate on the issue on the floor.

30. At the 1944 Convention, the meeting attendance requirement was amended to provide for attendance at one-half of the *regular* meetings of the Local for the six months preceding the election. The formal Convention Proceedings show no reasons for this change and there was no debate on the issue on the floor.

31. At the 1946 Convention, the terms of local union officers were increased from one year to two years effective June 1946 (1946 Proceedings, pp. 359, 360; 1946 Constitution, Article VII, Section 8). No change was made in the meeting attendance requirement.

32. At the 1948 Convention, the period of time in which members were required to attend one-half (½) the meetings preceding

elections was lengthened from six months to twelve months, both for local union officers and for Convention delegates. The Convention Proceedings relating to these changes are attached hereto as Exhibit I.

33. At the 1952 Convention, the Constitutional Committee recommended that the meeting attendance rule be increased from twelve months to twenty-four months for local union officers to be effective in local union elections commencing in June 1952. Following debate, the original resolution was withdrawn and rewritten to provide that the increase in attendance would be effective for elections subsequent to June 1952. The revised resolution was adopted by the Convention. The same change was made in the meeting attendance requirement for delegates. The Convention Proceedings relating to this proposal are attached hereto as Exhibit J.

34. At the 1956 Convention, a resolution was introduced which would have required that a member must attend one-half of the meetings that his working hours did not prevent his attending. No change in the Constitution resulted. However, there was discussion on the resolution. The Convention Proceedings relating to this proposal are attached hereto as Exhibit K.

35. At the 1960 Convention, a Local Union submitted a resolution to amend the Constitution in a manner similar to that suggested in 1956, as described above. No change in the Constitution resulted. However, there was discussion on the resolution. The Convention Proceedings relating to this proposal are attached hereto as Exhibit L.

36. At the 1962 Convention, the term of office for local union officers was increased from two (2) years to three (3) years to be effective commencing with the June 1964 elections (Article VII, Section 8). No change was made in the provisions of the Constitution dealing with the meeting attendance rule.

37. With respect to the 1964 Convention, attached hereto as Exhibit M is the statement of counsel for defendant, who was present, concerning what transpired within the Constitutional Committee. At the Convention, the meeting attendance rule was amended to provide that members must have attended one-half (½) of the meetings in the thirty-six (36) months preceding the election, subject to the exceptions for union business or conflict in working hours

previously in effect. The Convention Proceedings relating to this amendment are attached hereto as Exhibit N.

38. It is the position of the defendant International that the meeting attendance requirement as set forth in the International Constitution, By-Laws for Local Unions and the Local Union Elections Manual should be retained because it serves a three-fold purpose:

(a) to encourage broad base participation in the affairs of the union, and to obtain as large a turnout as possible at the meetings at which the union's business is conducted;

(b) to attempt to assure that candidates have demonstrated an interest in and are likely to be concerned with the problems of the union; and

(c) to attempt to insure that candidates have participated in the affairs of the union and are, therefore, sufficiently familiar with its problems to be able more intelligently to fulfill the numerous responsibilities and duties attendant to holding office.

This position was made known to representatives of the Secretary of Labor by representatives of defendant International prior to the initiation of this suit.

39. The parties hereby further agree as follows:

(a) Attached hereto as Exhibit O and made a part hereof is a true copy of the relevant portions of the transcript of testimony of Herbert J. Lahne, Director of the Division of Research, Labor-Management Services Administration, United States Department of Labor, which testimony was adduced at the trial of the case of *George P. Shultz, Secretary of Labor* v. *Local Union 6799, United Steelworkers of America, AFL-CIO, et al.,* in the United States District Court for the Central District of California, Civil No. 68-326-EC. The testimony set forth in Exhibit O may be considered by the Court as though it were oral testimony adduced at the trial of the cause now before this Court.

(b) Attached hereto as Exhibit P and made a part hereof, is a chart prepared by Herbert J. Lahne, Director of the Division of Research, Labor-Management Services Administration, United States Department of Labor, entitled "Attendance at Union Meetings as a Requirement for Nomination or Election to Local Union Office, as Provided by National Union Constitutions and Bylaws, June, 1967." Exhibit P is a copy of the document received in evi-

dence as Plaintiff's Exhibit 15, in the case of *George P. Shultz, Secretary of Labor* v. *Local Union 6799, United Steelworkers of America, AFL-CIO, et al.*, in the United States District Court for the Central District of California, Civil No. 68-326-EC (Transcript, pp. 305-306).

40. The parties further agree that the following defendants' exhibits introduced and received in evidence in the mentioned *Shultz* v. *Local Union 6799, USWA* case, are hereby made part of the instant record subject to the plaintiff's right to raise here any legal objections to their admissibility:

(a) Defendant Exhibit L in the *Local Union 6799* case—Holcombe letter to the Honorable Robert Kastenmeir (dated February 29, 1960). This exhibit is attached hereto, made a part hereof, and marked Exhibit Q.

(b) Defendant Exhibit N in the *Local Union 6799* case—Merrick letter to the Honorable Jonathan Bingham (dated November 25, 1966). This exhibit is attached hereto, made a part hereof, and marked Exhibit R.

(c) Defendant Exhibit Q in the *Local Union 6799* case—Kleiler letter to Senator Javits (dated December 5, 1966). This exhibit is attached hereto, made a part hereof, and marked Exhibit S.

(d) Defendant Exhibit T in the *Local Union 6799* case—excerpts from U. S. Department of Labor LMRDA Interpretative Manual, to wit: Sections 422.205, 422.206, 422.208, 422.250. This exhibit is attached hereto, made a part hereof, and marked Exhibit T.

It is further stipulated and agreed that each party reserves the right to present additional evidence at the trial.

DATED: April 27, 1973.

WILLIAM J. KILBERG, Solicitor of Labor
HERMAN GRANT, Regional Solicitor
ALAN M. SERWER, Attorney
Attorneys for Peter J. Brennan, Secretary of Labor, United States Department of Labor,
Plaintiff.

A. E. LAWSON
Attorney for Defendants

EXHIBIT D

Members eligible to run for office with 18 meetings or more.

C. Jett 251	R. Erickson 682	M. Mahoney 1040
J. Krischak 268	G. Layman 617	R. Satz 1075
D. Ross 339	W. Uzzell 622	V. Batson 1030
B. King 319	C. Hoffman 683	E. Debney 1050
B. Frye 363	P. Eickelman 800	J. L. Powell 1203
R. Dayhuff 549	R. Forsythe 859	F. Blade 1244
R. Brown 521	C. Kennedy 966	
J. Powell 560	H. McCloud 902	

Members having attended 15 to 18 meetings.

B. Scank 227	15	W. Larue 524	16	B. Brackall 605	16

EXHIBIT E

UNITED STEELWORKERS OF AMERICA
ELECTION OF OFFICERS AND
COMMITTEEMEN
LOCAL UNION 3489

President (Vote for one)
- Willis Uzzell ..... ☐
- Russell Forsythe ..... ☐
- Bernard Frye ..... ☐

Vice President
- Paul Eikelman ..... ☐

Recording Secretary
- Mike Mahoney ..... ☐

Financial Secretary
- Gerald Layman ..... ☐

Treasurer
- Don Ross ..... ☐

Guide
- Wayne Larue ..... ☐

Guard
- Roy Erickson ..... ☐

Trustees (Vote for three)
- Robert Brown ..... ☐
- Chester Hoffman ..... ☐
- Richard Dayhuff ..... ☐
- Fred Blade ..... ☐

Grievance Committee
(Vote for five)
- Fred Blade ..... ☐
- Ed Debney ..... ☐
- Russell Forsythe ..... ☐
- Mike Mahoney ..... ☐
- Bill King ..... ☐
- Bernard Frye ..... ☐
- James Powell ..... ☐

EXHIBIT F

TITLE IV—filed 6-23-70 in regards to the Election of 6-22-70. Copy of Original sent to Local Union.

1. There was no booths to have a *"secret ballot"*, that the men had to use the walls, chairs, tables and anything else, with men next to them knowing how they voted, thus leading to intimidation of the Voters.

2. That "reasonable requests for distribution of campaign literature" could not in most cases be made, because equal rights of the candidates did not exist Reason: new candidates know nothing of about the rules in the Local Union Election Manual. Only the old candidates or incumbents had said copies. In fact, there were, according to the Recording Secretary, only four said books for the entire membership outside of the officers.

3. That only the incumbent officers had access to lists of members, thus discrimination in favor of the incumbents and discrimination against new candidate. Reason: No knowledge was given, because of lack of Local Union elections Manuals.

4. That because of the lack of the Local Union election Manual, new candidates did not have the equal knowledge of the right to inspect a "list containing the names and last known addresses of all members".

5. The Local Union did not make "adequate safe guards to insure a fair election". (Ballots were placed in the center of the table where one took his own Ballot).

6. I was refused the right to have an observer at the polls, and also at the counting of the Ballots, on the grounds that I did not tell them in time. Title IV does not contain a time limit for having an observer named.

7. That the requirement to have attended 18 meetings was *unreasonable* because it disqualified all members (550 strong) except 22 members, when there was a total of 15 positions to be filled.

8. That approximately (151) members on lay-off status were not given equal and reasonable notification of the nomination held May 17, 1970 (working members were sent a special Post Card).

9. That approximately (151) members on lay-off status were not given equal and reasonable notification of the election held June 22, 1970, thus not giving them equal rights to Vote.

10. That the election was not held in accordance with the Constitution and By-Laws of the Local Union, the Local Union Election Manual does state that the Nominations would be held at the meeting *immediately* preceding the election. We had a meeting the day before the elections which was a violation of our own Manual.

11. That the Tellers did let candidates and members loiter at the Polling Place even though one Teller states he knew of the requirements in our Manual which states we can't loiter. This caused intimidation of the Voters because they were forced to mark their ballots in front of all present.

12. That the elections was held on Monday, which gave the incumbent an edge over the other candidates, thus not giving equal opportunity.

13. That a Veteran who had been back to work for eight months was not permitted to run for office even though he was nominated because he didn't have 18 meetings in.

14. That the Tellers did refuse to let William Field, a member in good standing, on Lay-off, to vote and only after appealing it to the International Representative Rust Dollars, was he permitted to cast his Vote.

15. That the Local Union President and the International Representative did state at three monthly meetings, the last being June 21, 1970 the day before the election, that the men on lay-off had no right to vote.

16. That there were several meetings held at the Local (4-12 shift) which the attendance was not taken because of lack of ten members to have said meeting even though it was to be a continuous meeting. Day shift having the other half of the meeting, thus men were not able to meet the requirement of 18 meetings.

17. That sometimes there was no guard on the attendance Records ledger, thus permitting members to add extra names if they so wished.

Therefore, I request New Nominations and New Elections be held, and that the unreasonable requirement of 18 meetings be dropped in this particular case.

Respectfully requested,

s/ Bernard G. Frye
1304 South 7th
Terre Haute, Indiana 47802

EXHIBIT G

1304 South 7th
Terre Haute, Indiana 47802
July 19, 1970
(Enclosure of Charges)

International Executive Board
United Steelworkers of America
1500 Commonwealth Building
Pittsburgh, Pa. 15222

Dear Sir and Brother:

It is my unpleasant task to request of your Board to call new nominations and election for my Local 3489 (Steelworkers).

Dear Brother, I have, to the best of my ability, followed the Local Union elections Manual. On Page (31) thirty-one of the above said Manual, it states, "All protests . . . must be filed in writing with the Local Union *prior* to the membership meeting at which the report of the election committee is read."

At our Local Union meeting, held July 19, 1970, the election committee report was read and also my protest of the election dated June 23, 1970, Registered letter #24300. Also additional charges filed July 14, 1970, Registered letter #64129 were read.

The Local Union, after I requested new nominations and new election be held, entered into its minutes the following: "Objection by C. Jetl, that such an action is not called for until after facts are considered and studied before any action can be taken." No additional action was taken, I was not permitted to give my side of the matter, and was called out of order. The International Representative was present and rendered no help in my effort to give the facts. Therefore, I appeal the decision of our Local and ask your Board to call for Nominations and election be held over again for Local 3489.

Fraternally,

s/ B. Frye

EXHIBIT M

APPENDIX

In The

Supreme Court of the United States

October Term, 1970

No. 655

James D. Hodgson, Secretary of Labor,
Petitioner,

v.

Local Union 6799, United Steelworkers of America, AFL-CIO, et al.

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

---

Petition for Certiorari Filed September 4, 1970
Certiorari Granted December 7, 1970

* * * *

[392] MR. GOTTESMAN: Then I would offer a stipulation that if I were—and we have discussed this among counsel—that if I were called as a witness I would testify as follows: I was present at the conventions of the International Union, United Steelworkers of America, in 1962 and in 1964.

That the Union holds its conventions every other year. And that prior to the 1962 convention the term of office provided in the Constitution for Local Union officers was two years.

That at the 1962 convention the delegates voted to change the term of office to three years and that became effective with what was the next election thereafter, namely, the 1964 election.

In the 1962 convention no change was made in the provision of the Constitution dealing with meeting [393] attendance. At that time that provision stated that a member had to have attended 12—I guess one-half of the meetings during the preceding 24 months.

At the 1964 convention I served as counsel to the Constitution Committee of the convention. The International Officers had not recommended any change in the constitutional provision dealing with meeting attendance.

However, from the floor of the Constitution Committee a number of delegates proposed that that provision be changed so that it was co-terminus with the new term of o[illegible] namely, three years. Therefore, it recites the number of meetings that had to be attended was one-half of 36.

The Chairman of the Constitution Committee, who was a member of the International's Executive Board, stated that in his judgment that change was not required.

However, the delegates, when they voted upon it in the Constitution Committee, voted that the change should be made or at least should be recommended to the floor of the convention as a whole. The majority so voted. The Constitution Committee made that recommendation to the convention as a whole and it was adopted by the convention as a whole.

So that beginning with the 1964 Constitu- [394] tion the provision has appeared that the meeting attendance requirement is one-half of 36 meetings.

Since the '64 convention took place, after the 1964 elections, the first elections which were run under the new half of 36 requirement were those which were run in 1967.

I might add for clarity that all of the Local Unions in the Steelworkers elect at the same time, namely, in June of a year designated in the Constitution. So that in June of 1967 all of its Local Unions were conducting elections.

I offer that if called I would have so testified.

MRS. JANAVS: So stipulated. We have no cross examination as to this testimony.

EXHIBIT N

Article VII, Section 9—Page 47

There were 29 resolutions dealing with eligibility requirements.

Three (3) resolutions would tighten eligibility requirements so that members on the 3 to 11, and the 4 to 12 shifts must attend at least six (6) Local Union meetings.

Two (2) resolutions will permit absence from Local Union meeting due to vacation to be an allowable reason for non-attendance.

Eleven (11) resolutions would request that a member, who is normally excused from attending a meeting because he is working, will get credit for such meeting if he makes his request in writing.

Four (4) resolutions would make ineligible for office those members who performed supervisory functions in the 24-month period prior to election.

One (1) resolution would require that attendance credits be acquired prior to the time of *nomination* instead of election.

Five (5) resolutions would require attendance at one-half of regular meetings "for the 24 months prior to June elections that his working hours or Union activities permit."

Two (2) resolutions would require attendance at one-half of the regular meetings for 36 months instead of 24 months previous to the Local Union elections.

The Committee non-concurs in the first twenty-seven (27) resolutions but does concur in the last two resolutions requiring attendance at one-half (½) of the regular meetings for 36 months previous to the Local Union elections. The Committee also recommends a date change on line 28 from "June, 1964" to "June, 1967." Section 9, page 47, line 25, paragraph (c), will then read:

"(c). He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June 1967 election, unless his Union activities or working hours prevented his attendance."

Committee Secretary Carcella: The Committee recommends its adoption.

. . . The recommendation of the Committee was adopted.

EXHIBIT O

THE WITNESS: Herbert J. Lahne, L-a-h-n-e.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. DONOGHUE:

Q. By whom are you employed?

A. U.S. Department of Labor.

Q. What is your present position?

A. I am Director of Division of Research, Labor-Management Services Administration.

Q. How long have you held this position?

A. Under different organizational setups since 1959.

Q. What type of work does this Division perform?

A. We do research in the field of Union structure, administration, welfare, pension plans and anything [304] that is requested by the Assistant Secretary under whose supervision we happen to be.

Q. This includes work in connection with the Labor-Management Reporting Disclosure Act?

A. It does.

MR. DONOGHUE: Your Honor, we have attached to the list of plaintiff's witnesses a summary of Mr. Lahne's experience and educational background.

At this time to avoid any delay, we would like to offer that as an exhibit.

MRS. JANAVS: 19.

MR. DONOGHUE: 19.

MR. GOTTESMAN: No objection.

THE COURT: 19 is ordered in evidence.

(Document marked Plaintiff's Exhibit 19 was received in evidence.)

MR. DONOGHUE: At this time, your Honor, I would like to move that Mr. Lahne be qualified as an expert in labor relations.

THE COURT: Any objection.

MR. GOTTESMAN: Your Honor, I'm not sure what an expert in labor relations is.

We will certainly stipulate Mr. Lahne is an expert in those areas

in which his qualifications, as described in Plaintiff's Exhibit 19, relate.

[305] THE COURT: Very well. All right. You may proceed.

MR. DONOGHUE: I would like at this time to have marked as Plaintiff's Exhibit 15 a chart showing a study of 72 National Constitutions.

THE COURT: Very well. 15 for identification.

(Document was marked Plaintiff's Exhibit 15 for identification.)

MR. DONOGHUE: May that be handed to Mr. Lahne, please?

(Exhibit placed before the witness.)

BY MR. DONOGHUE:

Q. Mr. Lahne, referring to Plaintiff's Exhibit for identification 15, could you identify this document and tell us what it is?

A. Yes, sir. This document was prepared under my direct supervision in my office, and as the title indicates it shows for 72 National Unions the provisions in those Union Constitutions relating to attendance requirements as a qualification for nomination or election to Local office. The date is shown as of June 1967.

Q. That is the date of the election in question?

A. That is what I understand.

[306] MR. DONOGHUE: I would move now, your Honor, that Plaintiff's Exhibit 15 be admitted.

MR. GOTTESMAN: No objection.

THE COURT: 15 is ordered in evidence.

(Document marked Plaintiff's Exhibit 15 was received in evidence.)

BY MR. DONOGHUE:

Q. Now, Mr. Lahne, would you explain in your own words exactly what the chart shows?

A. Yes. This chart in its first column at the left gives the name of the Union in a short form.

The second column gives the date of the provisions analyzed, which are in effect as of June 1967.

The third column shows the number of members in each of the Unions so named.

The last two columns show the attendance requirements in each of these Unions, if there are any such requirements.

There are two columns, the two last columns show the number or percentage of meetings which is specified in the Constitution to be required, and the last column shows the number of months over which that attendance must be achieved.

Looking at the—do you want me to point out the various highlights of the table at the present [307] time in terms of what it shows?

Of the 72 National Unions here, which comprise 90 per cent of the Union membership in the country, of these 72 56 of these Unions, with 68 per cent of the membership, have no provisions requiring attendance at meetings to be eligible to run for office.

Four of the Unions, with 7 per cent of the Union membership, give the Local Union an option as to whether or not they have a meeting attendance requirement.

And just 12 of the Unions, with 25 per cent of the membership, have a mandatory provision requiring candidates for Local offices—

THE COURT: You said 25 per cent?

THE WITNESS: 25 per cent of the membership, yes, sir. 12 Unions, with 25 per cent of the total membership, have provisions which require—

THE COURT: Mandatory?

THE WITNESS: —attendance at meetings. Now, these requirements vary somewhat, but I will just refer to the period of time required to fulfill the requirement.

Of the 12 Unions, four of them allow the requirement to be fulfilled in six months. Two of them have the requirement subject to fulfillment in one year. [308] Three of them provide a two-year period over which the requirement must be fulfilled. And two of them specify that there is a three-year period.

THE COURT: Is this one of them, the Local here?

THE WITNESS: The Steelworkers is one of the three-year Unions.

THE COURT: One of the two—

THE WITNESS: I'm on three years now. Four of them are six months.

THE COURT: Yes, I understand that. Two with a year, three with two years and two are three years.

THE WITNESS: Two are three years.

THE COURT: Now, I asked you—

THE WITNESS: The Steelworkers is one of those two for three years.

THE COURT: All right. What about the other ones?

THE WITNESS: There is one left, and that is the Boilermakers. They don't specify the period. They simply say that the member must attend such meetings as the Local By-Laws require. That accounts for the 12 Unions which are on this table as having mandatory requirements.

[309] MR. DONOGHUE: We have no further questions at this time, your Honor.

THE COURT: Very well.

CROSS EXAMINATION

BY MR. GOTTESMAN:

Q. Mr. Lahne, do I correctly understand that this table shows only those provisions that appear in the Constitutions of International Unions?

A. That is correct.

Q. In compiling this table, was that the only source which was looked to?

A. That is correct.

Q. In other words, if the Union has a standard By-Laws, which are to become binding on each of its Local Unions, which is a document separate from its Constitution, that was not looked at—

A. I'm sorry. I would like to correct that.

We looked at all the documents. We considered that those standard By-Laws are part of the National Constitutions.

Also I might say these Constitutions were submitted under the requirements of the Landrum-Griffin Act, with which I am sure you are familiar. In some cases the Constitution itself was submitted for an earlier [310] year and supplemented by the annual reports that these Unions are required to make. So that in some cases it is a combination document, a printed Constitution plus the annual report which the Union is required to make when it changes its Constitution.

In other words, the Union may not choose to reprint the entire Constitution, say, in 1967 when it has only one change over 1965. So we use the 1965 Constitution, plus the documents submitted to the Department of Labor indicating the change in 1967.

Q. Now, Mr. Lahne, you did not in preparing this table look at any provisions which appear in Local Unions' own Constitutions or By-Laws?

A. We did not.

Q. This is a chart that deals with eligibility requirements for Local Union elections, is that not right?

A. That is correct.

Q. Having in mind your position as an expert in this field, you do know that there are at least some Local Unions that provide such requirements in their own By-Laws?

A. Yes, I do.

Q. Did you make any effort to ascertain how many Local Unions having how much membership have their provisions in their own By-Laws?

[311] A. I did not.

Q. Do you have any basis to make an estimate as to how many Local Unions?

A. You mean of the total Local Unions in the country?

Q. Yes.

A. Only my some 30 years looking at Local Union Constitutions in other connections and dealing with Local Unions, speaking to Local Union members and officers.

Q. No systematic effort has been made to determine—

A. No systematic effort has been made to tabulate the total number of Local Union Constitutions, which is in the neighborhood of 45,000—I'm sorry, there are some 45,000 Local Unions, and there has been no systematic tabulation by anyone of the requirements in these Constitutions in this regard.

THE COURT: Then of the 68 per cent of the membership, wherein the International does not provide for any attendance requirement qualifications for running for office, we don't know whether—maybe all of those Local Unions do provide for it and maybe none of them do, we don't know.

THE WITNESS: Yes, your Honor, that is correct, we do not

know the exact—an exact figure. It [312] is entirely possible some have them and some do not.

BY MR. GOTTESMAN:

Q. Now, I gather that means then for each International Union which appears on this chart, with a little dash, signifying no provision in its International Constitution, that we are provided no knowledge as to how many, whether it be none, some or all of its Local Unions have on their own adopted a meeting attendance requirement?

A. That is correct.

Q. Am I correct also in understanding that the only eligibility requirement with which this chart deals is meeting attendance?

A. Correct.

Q. Are there other provisions that appear in the Constitutions of some or all of the Unions here, which also qualifies the right of the members to run for office in the Union?

A. Yes, sir.

Q. Would you say at least some such provision appears in the Constitutions of all the 56 Unions which do not have a meeting attendance requirement?

A. I don't understand your question. Some such what?

Q. Are there at least some eligibility require-[313] ments, other than simply being a member of the Union?

A. Yes, there are. There are some requirements which are practically universal in Union Constitutions.

Q. Now, are there some requirements in at least some of these Constitutions which are intended to serve purposes comparable to those you understand the meeting attendance requirement to serve?

THE COURT: Let's find out first what he understands the meeting requirement—

THE WITNESS: I was just about to—

BY MR. GOTTESMAN:

Q. All right. Can you tell us, from your experience in this field, what you understand to be the purpose of the meeting attendance requirement?

A. As I understand, the Union's position as to meeting attendance requirement—I am not referring only to the Steelworkers but to other Unions which have it, and even the Unions that don't

have it who have discussed with me the desirability or undesirability of having it—there is the understanding or let us say the hopeful belief that attendance at meetings makes a member acquainted with Union affairs, so that if he desires to run for office he will have some knowledge of Union affairs and Union problems.

[314] THE COURT: Now, then your next question.

BY MR. GOTTESMAN:

Q. The next question is, are there Unions on this list who have provisions other than meeting attendance provisions which are intended to serve that same purpose, namely, to assure we have officers who have some knowledge and familiarity with Union affairs?

A. Well, it is a little hard to answer the question the way you put it.

If I may refer to the universal, practically universal qualifications for holding Union office, some of these might be so construed.

For example, that a member be—a person be a member of a Local for at least one year is virtually a universal requirement.

Now, I suppose the answer there would be that this could be intended to serve the same purpose.

The second virtually universal requirement is the requirement that the member be in good standing. There is one which is not as universal but very common, that the member be employed at the trade. This is especially true in craft Unions.

I think there may be one or two others, but there are about three possibly four qualifications which are universal among the Unions.

[315] As to the meeting attendance, as—I'm speaking of National Constitutions—it is not that common. There are other uncommon ones, for example, prior office holding is an uncommon requirement, a very rare requirement; more rare than even the meeting attendance requirement.

Q. But there are some International Unions that have a prior office holding requirement?

A. I think there are only two.

Q. Are those two on this list?

A. Let me see, now. The Maritime Union was one and, of course, that case was litigated and the Maritime Union has now removed that provision, or at least—

Q. At the time of this election?

A. June '67. I guess that is true at the time of June '67, they did.

The Garment Workers have such a provision but it is rather qualified. It can be avoided by attending a training school in lieu of holding prior office. I think those are the only two offhand. I haven't memorized all the Constitutions of all Unions.

Q. To your knowledge are there any other provisions designed to assure qualifications, other than meeting attendance and these two you just mentioned and [316] those you have mentioned earlier?

A. There are, for example, some Unions have a citizenship requirement. There are—in addition to positive requirements there are negative aspects. For example, criminals, Communists—

THE COURT: He is talking about requirements that—

THE WITNESS: Which qualify a person positively, in the affirmative sense.

THE COURT: No. He is talking about requirements from which you could conclude the Union was insisting that the candidates have an acquaintance with the Union business.

THE WITNESS: I see. Yes, in that sense I think I have mentioned only those—period of membership in the Local is the primary one.

THE COURT: Is there any requirement as to the period of time the man must belong to the Union?

THE WITNESS: I think that was litigated in one case where the time was five years and the Court considered that to be too long for a Local office.

THE COURT: There was nothing indicated as to what the Court felt was a reasonable period of membership?

THE WITNESS: I believe the Court at that [317] time indicated that—I can only go by my memory—I think three years. I think the Court said possibly two or three years might be acceptable, but the Court didn't lay down any rule, but they felt five years was too long.

THE COURT: There has been no litigation of this period—of any period with respect to the attendance of meetings?

THE WITNESS: Oh, yes, there has been litigation on that. I assume our attorneys will cite all the cases.

Actually, the meeting attendance—in the Glass Bottle Blower cases. There are several of those.

BY MR. GOTTESMAN:

Q. Those cases involved a provision, I think, on your chart that the Local required attendance of 75 per cent of the meetings?

A. In three years. Yes, I believe—

THE COURT: And that was held to be too severe?

THE WITNESS: Yes, The period of time,—

THE COURT: Wasn't it 75 per cent that was held to be unreasonable?

THE WITNESS: Sometimes, your Honor, if you will excuse me, it is just a little hard to know just—

[318] THE COURT: Did the Court say the three-year period was excessive?

THE WITNESS: It was 75 per cent two years and the Court simply said it was unreasonable. I don't remember any other details from the decision.

THE COURT: All right.

THE WITNESS: It may be that—

THE COURT: There is an exhibit already in here—I don't have the number of it—which refers to that case and says 75 per cent.

MR. GOTTESMAN: Defendant's Exhibit T, I believe, your Honor.

THE COURT:

> "The Court concluded that the requirement of 75% attendance at Union meetings was too high when combined with a strict rule regarding excused absences which permitted a member to be excused only when he was required to work on the job while the meeting was being held. The Court also stated that a rule which, as in this case, limits the eligible group to 2.2% of the membership seems to be too harsh."

That certainly makes good sense, so far as I am concerned.

* * * *

[319] Q. —to your knowledge has any Court ever held a 50 per cent meeting attendance rule invalid?

[320] A. I don't recall any. But I will have to say again here—

* * * *

[323] Q. Just one last question. As I look at this and look at the rankings of the Unions in the order of their members, am I correct in noting that the largest, the third largest and the fifth largest of the Unions on your table have a meeting attendance requirement of one form or another in the International Constitution?

I'm referring to the Teamsters, Steelworkers and I believe it is the Machinists.

A. Well, I haven't examined that. The [324] Teamsters and the Steelworkers, of course, I know to have a requirement. The Machinists have a Local option.

MR. GOTTESMAN: I have no further questions.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. DONOGHUE:

Q. Mr. Lahne, could you tell the Court why you looked at National Constitutions and not Local Union Constitutions?

A. Because it was a National Union Constitution provision which was involved in this case.

Q. Based upon your expert opinion, would you think it would be likely for a Local Union Constitution to contain a meeting attendance requirement as a qualification of their right to be a candidate, absent a mandatory provision in a National Constitution?

A. I would think that only a minority of Local Unions will have such a provision if it is not required by the National Constitution.

Q. In your opinion, would you say attendance at Union meetings is necessary in order for a member to become knowledgeable about the affairs of the Union?

* * * *

[325] THE WITNESS: Yes, my opinion on the meeting attendance rule, I might say, might not necessarily be that of the Secretary of Labor.

My opinion on a meeting attendance rule just happens to coincide with the Secretary's but for different reasons. I believe the meeting attendance rule is not necessary to give the member a knowledge of what transpires in the Union and what the Union's problems are, in order to become a better officer.

BY MR. DONOGHUE:

Q. Could you tell us what other ways are available, based on your knowledge and experience, as to how they gain this knowledge?

A. Union members secure a great deal of [326] knowledge by Union affairs and problems within the Union, issues within the Union, through the talk that goes on in the shop, at the work place and away from the work place, about Union affairs.

Union meetings, as they are presently constituted, especially in Unions with anywhere from a couple of hundred members up to many thousands, tend not to be town hall type meetings but rather to be delegate type meetings unofficially.

Those whose offices in the Union or activity in the Union, such as shop delegate, committeemen, informal leaders in the shop, those who go to the meetings report back to the shop and are expected to and are questioned by people in the shop about what went on in the Union.

I might say this is a subject on which I wrote an entire article, which is listed in the sheet which the Court has, which received a prize from the American Psychological Association, as the best study of the relationship of psychological factors to industrial matters, and it has been cited hundreds of times and reprinted hundreds of times.

THE COURT: Mr. Lahne, the fact that there might be a better way to acquaint the members with the business of the Union—when I say "better" I mean [327] better than requiring meeting attendance—let's assume, for the purposes of discussion, that there is a better way to do it,

It doesn't necessarily follow their requirement of meeting attendance as a means of accomplishing that purpose is unreasonable.

THE WITNESS: No, there are many—

THE COURT: There are different ways.

THE WITNESS: There are different ways.

THE COURT: And you might think and I might agree with you that one or two ways were better, it still wouldn't make the meeting attendance unreasonable unless the requirement was such as specified in these cases, if the requirement were such that it made it so onerous and made it so difficult for the membership to comply with it that it would be deemed unreasonable.

THE WITNESS: Yes. I would say there are several ways of

doing it and the informal way appears to be the most prevalent, since most Unions do not require you have a meeting attendance rule, they find—at least they believe and I know of no evidence that Unions with a meeting attendance rule get any better officers or are any better governed than those without such rules.

So there are these several ways. The vast majority of the Unions have preferred to rely upon [328] these other ways, rather than upon meeting attendance.

THE COURT: Now, there are 68 per cent we don't know what the Locals do, aren't there?

THE WITNESS: In terms of an exact survey that is correct.

THE COURT: You feel the minority of them that would have—

THE WITNESS: The small minority would have the meeting attendance rule.

BY MR. DONOGHUE:

Q. Would you tell the Court what you would say are the qualifications universally found in Constitutions?

A. I think we went through this. Good standing, a period of membership in the Local, these are the two which are most frequent.

Q. In your opinion would you say that a member who met the universal qualifications is more qualified or less qualified than a person who has to attend a certain amount of meetings to qualify as a candidate?

A. I wouldn't say he was more or less. I would say, depending upon his interest in finding out about Union affairs, whether he attends a meeting or not, if he meets these universal qualifications he is on a par with everyone else.

[329] Q. Based upon your experience do you find that Unions that have these meeting attendance requirements as qualifications has increased attendance at Union meetings?

A. No, they have not. As a matter of fact, it appears practically nothing, your Honor, which can increase on any permanent basis the low attendance at normal routine Local meetings.

From door prizes—I have been places where the meeting lasted just long enough to say, "There's beers at the back" and the attendance was no better than at the place where they had fines put

on attendance, where they had meeting attendance requirements for eligibility, except in crises times of contract negotiations and election of officers if they are hotly contested. Meeting attendance at Local meetings runs along on the low plane.

MR. DONOGHUE: I have nothing further.

THE COURT: Anything further?

RECROSS EXAMINATION

BY MR. GOTTESMAN:

Q. Mr. Lahne, I don't want to challenge your qualifications. Are you certain provision of beer has no effect on meeting attendance?

[330] A. Well, there weren't many more people there at that meeting and it happened to be a meeting of rough and tough guys, Operating Engineers. This one I happen to remember was in Baltimore. I didn't realize until the middle of the meeting that this Local was under trusteeship. No one mentioned it at the beginning of the meeting.

But I had gone to another meeting in the same city just the day before and there wasn't much difference in attendance.

Q. You stated as your view that you don't think meeting attendance is a particularly good way to assure qualifications or that it is a necessary way?

A. It is not a necessary way. It is not necessary to qualifications. I don't say it is not one of the ways.

Q. That was going to be my next question.

There are reasonable men, are there not, that concede that there is a relationship between meeting attendance and qualifications, who see it differently than you do in that respect, one of whom is Secretary of Labor, at least, in his Interpretive Manual?

A. I am free to disagree with the Secretary.

Q. Pardon me?

A. I am free to disagree with the Secretary.

[331] THE COURT: He is asking you if you do in this regard.

THE WITNESS: Well, as a matter of fact, until you read that exhibit I was unaware the Secretary had taken that position.

BY MR. GOTTESMAN:

Q. Well, based on the position as expressed in that Manuel that

was read in court yesterday, are you in disagreement with the position stated there?

A. If you will give me the exact language I will be glad to state my disagreement.

MR. GOTTESMAN: Would the clerk give the witness Exhibit T, and maybe another one or two.

THE COURT: I think it was one of the letters, wasn't it?

MR. GOTTESMAN: One of the letters, I think. Also Exhibit Q.

THE WITNESS: Let's see, I have Exhibit H here.

THE COURT: T and Q.

MR. GOTTESMAN: I believe it is T. It has an "H" and "T" on the bottom.

THE WITNESS: That is correct. Which part are you referring to of this exhibit?

[332] BY MR. GOTTESMAN:

Q. The second paragraph relating to the 50 per cent, the two years meetings. The second marginal numbered paragraph.

A. Yes, I disagree with the Secretary.

Q. Thus far, as I have understood your testimony, you have talked about your views about the necessity for fulfilling one of the functions of the meeting attendance rule, or, at least, one function, namely, having more qualified officers.

Let me suggest to you some other possible justifications for it and tell me whether you think these are equally unreasonable or less unreasonable or not unreasonable at all.

Might not an International Union have as one of the objectives in requiring such a provision the desire to have a system of checks and balances, whereby those who are, in fact, dissatisfied with the performance of the incumbent officers, and who would be inclined to run against them, would be motivated by the meeting attendance rule to actually attend the meetings and therefore have a check on what the incumbent officers are doing by the mere fact they are there?

A. Now, what does your question relate to?

Q. The question is, is that an unreasonable [333] reason for the Union to have a meeting attendance requirement?

A. It might be a given reason but I don't see it as a valid reason.

Very often dissatisfaction is expressed by non-attendance at meetings.

Q. Isn't it true that very often dissatisfaction is also expressed by attendance at meetings?

A. That is true. But, as I say, dissatisfaction, a feeling it is useless to go to a meeting, for example, because you are not allowed to talk. The women especially have been known and in my presence have walked out of meetings where altercations have started, and there is no doubt about their dissatisfaction with the Union, but they will not attend the meeting.

Q. You are not suggesting that in the Locals of the Steelworkers—

A. I am not suggesting as to any particular Local.

Q. I want to be clear. Assuming that, in fact, it is not the history of Steelworkers Local Unions, or this one, that members are not allowed to talk or altercations are common at the meetings, so that those barriers to an opponent desiring to attend are removed?

A. I would say there is a little of this in practically every Union one place or another.

[334] Q. I am not asking for a confirmation that we are pure and wholesome, but I am asking whether with these barriers removed there is, in fact, some reason for an International Union to desire that?

THE COURT: He has already testified that attendance is not an unreasonable requirement to assure acquaintance with business. He has already testified to that, in answer to my question, so there is no reason to go into great detail about this, and conduct a laborious examination on this. I mean he has admitted that.

He thinks there are other ways that are better, but he say that this is a reasonable way.

Isn't that what your testimony has been?

THE WITNESS: Well, I would say, your Honor, it is a reasonable way if it is not too restrictive.

THE COURT: Of course, if it is not too restrictive. That goes along with it. That was included in my question.

THE WITNESS: I might philosophically, even if a hundred per cent of the members qualified under the rule, I would still, as a matter of making elections as unrestrictive as possible, not personally care for the rule.

THE COURT: Why, surely, I can under-[335] stand that. You have indicated that.

MR. GOTTESMAN: I have no further questions.

EXHIBIT P

LEGEND

This table shows, for 72 national unions, representing 89 per cent of the total union membership, which national unions do or do not require attendance at local union meetings as a prerequisite to nomination or election to local union office. The date is as of June 1967, the date of the election in this case. Where no figures or footnotes appear on any line, it indicates that the national union constitution has no meeting attendance requirement of any kind—either optional or mandatory.

Attendance at Union Meetings as a Requirement for Nomination or Election to Local Union Office, as Provided by National Union Constitutions and Bylaws, June 1967 [1]

National union [2]	Date of constitution	Number of members [3] (000)	Attendance requirements [4]	
			Number or per cent of meetings	Number of months
Total	72	17,059	(.... 72 ....)	
Constitutions with provision	16	5,476	(.... 16 ....)	
Actors & Artists	6/65	62	—	—
Auto Workers	4/67	1,403	—	—

[1] This table includes all national unions covered by the Labor-Management Reporting and Disclosure Act having more than 40,000 members as listed in the *Directory of National and International Labor Unions in the United States, 1967,* Bureau of Labor Statistics, Bulletin No. 1596, 1968, and having 1 or more affiliated local unions filing under the LMRDA. Bulletin No. 1596 does not report membership for the United Mine Workers (Ind.); however, this union is included on the basis of its membership reported in the *Directory of National and International Labor Unions in the United States, 1963,* Bureau of Labor Statistics, Bulletin No. 1395, May 1964. The constitutions analyzed are those in effect in June 1967, according to reports required under LMRDA that were filed with the Department of Labor.

(See page 48 for footnotes)

National union [2]	Date of constitution	Number of members [3] (000)	Attendance requirements [4]	
			Number or per cent of meetings	Number of months
Bakery & Confectionery Workers	8/66	83	—	—
Bakery & Confectionery Workers (Ind.)	10/65	61	—	—
Barbers	1/66	72	—	—
Boilermakers	5/65	140	(5)	(5)
Bookbinders	1/65	62	—	—
Brewery Workers	10/65	55	—	—
Bricklayers	9/66	149	—	—
Carpenters	1/67	800	—	—
Chemical Workers	10/66	93	—	—
Clothing Workers	5/66	382	—	—
Communications Workers	6/66	321	—	—
District 50-UMW (Ind.)	4/65	232	[6] 50%	6 (N)
Electrical Workers-IBEW	9/66	875	—	—
Electrical Workers-IUE	1/67	320	—	—
Electrical Workers-UE (Ind.)	12/65	167	—	—
Engineers, Operating	4/64	330	Majority	6 (E)
Firemen & Oilers	5/66	45	—	—
Garment Workers Ladies	7/65	455	—	—
Glass Bottle Blowers	7/66	68	75%	24 (E)
Glass & Ceramic Workers	9/66	48	[7] 33-1/3%	[7] 12 (N)
Hotel & Restaurant Employees	7/66	450	—	—
Industrial Workers, Allied	9/65	83	—	—
Iron Workers	1/65	162	—	—
Laborers	10/66	475	—	—
Laundry Workers (Ind.)	5/65	63	—	—
Lithographers & Photoengravers ...	1/66	53	—	—
Longshoremen	8/63	80	—	—
Longshoremen & Warehousemen (Ind.)	4/67	60	—	—
Machinists	4/67	836	(8)	(8)
Maintenance of Way Employes	7/66	141	—	—
Marine & Shipbuilding Workers ...	10/66	43	(9)	(9)
Maritime	10/66	45	—	—
Meat Cutters	7/64	353	—	—
Mine, Mill & Smelter Workers (Ind.)*	10/65	75	—	—
Mine Workers, United (Ind.)	10/64	245	[6] 50%	6 (N)
Molders	8/66	80	—	—
Musicians	9/66	252	—	—
Office & Professional Employees	6/65	70	—	—

(See page 48 for footnotes)

National union [2]	Date of constitution	Number of members [3] (000)	Attendance requirements [4]	
			Number or per cent of meetings	Number of months
Oil, Chemical & Atomic Workers ...	8/65	165	—	—
Packinghouse, Food & Allied Workers	5/66	135	—	—
Painters	1/65	201	—	—
Papermakers & Paperworkers	10/66	144	—	—
Plasterers	1/65	68	—	—
Plumbers	1/67	285	—	—
Printing Pressmen	1/66	114	—	—
Pulp, Sulphite & Paper Mill Workers	9/65	171	[10] 2	6 (E)
Railroad Trainmen	1/65	185	[11] 7	36 (E)
Railway Airline & Steamship Clerks..	8/64	270	—	—
Railway Carmen	1/64	126	Majority	12 (E)
Retail Clerks	7/63	500	—	—
Retail, Wholesale	5/66	170	—	—
Rubber Workers	11/66	170	(12)	(12)
Seafarers	6/67	80	—	—
Service Employees**	1/65	348	—	—
Sheet Metal Workers	1/67	100	—	—
Shoe Workers	6/67	53	—	—
Stage Moving Picture Operators ...	7/66	62	—	—
State, County, Municipal Employees.	11/66	281	—	—
Steelworkers	9/66	993	50%	36 (E)
Teachers	1/67	125	—	—
Teamsters (Ind.)	10/66	1,651	[13] 50%	24 (N)
Telephone Unions, Alliance (Ind.)..	6/59	75	—	—
Textile Workers-TWU	6/66	182	—	—
Textile Workers-UTW	9/64	47	—	—
Transit Union	1/66	103	[14] 12	24 (E)
Transport Workers	5/66	135	(15)	(15)
Typographical	1/67	107	—	—
Upholsterers	9/66	58	—	—
Utility Workers	6/67	72	—	—
Woodworkers	12/65	94	—	—

(See page 48 for footnotes)

[2] National unions are identified by short-form titles as used in the *Register of Reporting Labor Organizations,* Labor-Management Services Administration, 1968; complete titles are shown on pp. vii-xv of that publication. National unions are affiliated with the AFL-CIO, unless identified as Independent (Ind.).

[3] Source: *Directory of National and International Labor Unions in the United States, 1967,* Bureau of Labor Statistics, Bulletin No. 1596, 1968. The 72 national unions included in this table account for approximately 89 per cent of the membership of all national unions reported in Bulletin No. 1596.

[4] Attendance requirement shows the number or per cent of meetings which a member must attend during the prescribed number of months immediately preceding the nomination (N) or election (E) of local officers.

[5] Member must attend regular meetings of the Lodge as required by Local Lodge Bylaws to establish eligibility.

[6] Member must attend 50 per cent of meetings during each month; if local holds only 1 meeting each month, member must attend all 6 meetings.

[7] Member must attend 1 meeting per quarter in each of the 4 quarters prior to nomination.

[8] Local bylaws *may* provide an attendance requirement not to exceed 50 per cent of the meetings held in the 12-month period preceding nominations.

[9] Local bylaws *may* require attendance at a minimum of at least 1 meeting per quarter during the 8 calendar quarters preceding the quarter in which nominations are made.

[10] Member must not be absent from more than 2 successive meetings.

[11] Member must attend at least 2 meetings in each of the 2 years preceding the year of election, and 3 meetings in the year of election.

[12] Local bylaws *may* provide an attendance requirement not to exceed 50 per cent of the meetings held in the 12-month period preceding nominations. However, this provision may be suspended by the Local Union Executive Board prior to nominations upon a proper showing that there is an insufficient number of members who meet such attendance requirement.

[13] Mandatory for locals which do not have own bylaws. Locals with own bylaws *may* provide lesser requirements.

[14] Member must attend 6 meetings during each year.

[15] Local bylaws *may* require attendance at a "reasonable" number of meetings during the period preceding nominations or elections.

* Merged with Steelworkers July 1967.

** Formerly Building Service Employees.

LMSA/OLMPD

February 1969

EXHIBIT Q

February 29, 1960

The Honorable Robert W. Kastenmeier
House of Representatives
Washington 25, D. C.

Dear Congressman Kastenmeier:

This is in further response to your letter of January 19, 1960 in which you requested information regarding the election eligibility requirements in the constitution of the International Union of the United Steelworkers of America. The request for information came to you from Mr. Elmer Dunkel, 721 North Pair Oaks Avenue, Madison 4, Wisconsin.

In our opinion, a provision requiring a member to have attended at least one-half of the regular meetings of his local union for 24 months previous to the election before he may be eligible to hold office, is not unreasonable if it is applied fairly and uniformly to all members. It might well be unreasonable, however, in circumstances in which attendance presented an unusual degree of difficulty for a significant proportion of the membership, as for example, where the local had an extensive geographic jurisdiction. Under the Act, the question of whether a particular qualification is reasonable rests with the courts. The Secretary does not have enforcement authority in this matter.

Sincerely yours,

JOHN L. HOLCOMBE
Commissioner

EXHIBIT R

November 25,1966

Honorable Jonathan Bingham
House of Representatives
Washington, D. C. 20515

Dear Congressman Bingham:

In reply to your inquiry relating to the letter which you received from Mr. Thomas McAdam I can advise you as follows:

Mr. McAdam filed his complaint with the Secretary of Labor on May 29, 1966, alleging violations of the Labor-Management Reporting and Disclosure Act in connection with the election of officers of Lodge 1085 of the Brotherhood of Railway Carmen of America.

The complaint was thoroughly investigated by the Office of Labor-Management and Welfare-Pension Reports; that Office found no violations of the law which may have affected the outcome of the election except in the following circumstances.

Section 481(e) of the Act provides that every member in good standing shall be eligible to be a candidate subject to "reasonable qualifications uniformly imposed." Mr. McAdam and most of the other union members were ineligible to be candidates because Section 26 of the constitution of this organization provides:

> "Any member who desires to be elected to any office in his lodge, must have attended a majority of the meetings of the Brotherhood Railway Carmen of America in the 12 months immediately preceding the month of election unless unable to attend for just and sufficient reasons. A member shall be required to advise the Recording Secretary in a written statement justifying his absence, and this to be done in the current month; a majority vote of the members in attendance at the meeting to determine acceptance or rejection of the offered excuse. A record of attendance and excuses for absence to be kept by the local lodge."

Although Mr. McAdam and other members working nights could

have been excused from attending meetings, none of them ought to be excused.

The Department originally concluded that there was nothing patently unreasonable about this qualification on office holding, but that the rule was nevertheless of questionable validity because in operation only a few members of the local besides the incumbent officers had satisfied this attendance requirement. Consequently, civil action on behalf of the Secretary of Labor was filed on May 28, 1966 in the U. S. District Court for the Southern District of New York.

Subsequent to the institution of this action, a general review of attendance requirements as a qualification for office holding was held by the Secretary of Labor. Upon further consideration of this problem it was determined that measuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied.

The question of whether a qualification on office holding is in itself reasonable is a matter which is not susceptible of precise definition. It cannot be said, however, that under all the circumstances, the meeting attendance requirement of Lodge 1085 imposes an unreasonable burden upon the union members. For this reason, the Department has determined to withdraw the case from court and will do so as soon as appropriate papers for this purpose are prepared.

Sincerely yours,

SAMUEL V. MERRICK
Special Assistant for
Legislative Affairs

EXHIBIT S

December 5, 1966

Honorable Jacob K. Javits
United States Senate
Washington, D. C. 20510

Dear Senator Javits:

In reply to your inquiry relating to the letter which you received from Mr. Thomas McAdam I can advise you as follows:

Mr. McAdam filed his complaint with the Secretary of Labor on May 29, 1966, alleging violations of the Labor-Management Reporting and Disclosure Act in connection with the election of officers of Lodge 1085 of the Brotherhood of Railway Carmen of America.

The complaint was thoroughly investigated by the Office of Labor-Management and Welfare-Pension Reports; that Office found no violations of the law which may have affected the outcome of the election except in the following circumstances.

Section 401(e) of the Act provides that every member in good standing shall be eligible to be a candidate subject to "reasonable qualifications uniformly imposed." Mr. McAdam and most of the other union members were ineligible to be candidates because Section 26 of the constitution of this organization provides:

> "Any member who desires to be elected to any office in his lodge, must have attended a majority of the meetings of the Brotherhood Railway Carmen of America in the 12 months immediately preceding the month of election unless unable to attend for just and sufficient reasons. A member shall be required to advise the Recording Secretary in a written statement justifying his absence, and this to be done in the current month; a majority vote of the members in attendance at the meeting to determine acceptance or rejection of the offered excuse. A record of attendance and excuses for absence to be kept by the local lodge."

Although Mr. McAdam and other members working nights could

have been excused from attending meetings, some of them sought to be excused.

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The question of whether a qualification on office holding is in itself reasonable is a matter which is not susceptible of precise definition. It cannot be said, however, that under all circumstances, the meeting attendance requirement of Lodge 1085 imposes an unreasonable burden upon the union members. For this reason, the Department has determined to withdraw the case from court and will do so as soon as appropriate papers for this purpose are prepared.

Sincerely yours,

FRANK M. KLEILER
Director

Enclosure

EXHIBIT T

Excerpts from U. S. Department of Labor,
LMRDA Interpretative Manual

ATTENDANCE AND PREVIOUS EXPERIENCE

422.205 ATTENDANCE AT 6 OF 12 UNION MEETINGS MAY BE REASONABLE

A provision requiring that to be eligible as a candidate for office a member must attend six out of twelve meetings during the year, if applied fairly and uniformly to all members, would not in ordinary circumstances, be an unreasonable qualification of the right to be a candidate for union office, within the meaning of section 401 (e) of the Act.

422.206 12 OF 24 MEETINGS MAY BE REASONABLE

A provision requiring a member to have attended at least one-half of the regular meetings of his local union for 24 months previous to the election before he may be eligible to hold office, is not unreasonable if it is applied fairly and uniformly to all members. It might well be unreasonable, however, in circumstances in which attendance presented an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction.

422.208 75% ATTENDANCE REQUIREMENT HELD UNREASONABLE

In a suit by the Secretary of Labor to set aside a local union election, the court concluded that a provision of the local bylaws requiring attendance at 75% of the regular meetings of the local for a two year period since the last previous election in order to be eligible as a candidate for office is not a "reasonable" qualification within the meaning of section 401(e).

The court concluded that the requirement of 75% attendance at union meetings was too high when combined with a strict rule regarding excused absences which permitted a member to be excused only when he was required to work on the job while the meeting was being held. The court also stated that rule which, as in this

case, limits the eligible group to 2.2% of the membership seems to be too harsh. *Wirtz* v. *Local 153, Glass Bottle Blowers* (U.S.D.C., W.D., Pa.), Aug. 28, 1965, 244 F. Supp. 745, 60 LRRM 2020, 52 L.C. 16,626.

422.250 PARTICIPATION IN UNION AFFAIRS

Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications they are not to be considered unreasonable in themselves.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

TERRE HAUTE DIVISION

TH 70-C-117

PETER J. BRENNAN, Secretary of Labor,
v.
LOCAL 3489, UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS AT TRIAL

May 10, 1973

[22] Department of Labor received the complaint as filed by Mr. Frye on or after September 24, 1970.

THE COURT: The Court has that matter under consideration. The Court will rule on that at the end of the hearing.

MR. SERWER: Your Honor, at this time the Government will call Mr. McCloud.

HARRY McCLOUD, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

1 Q. Mr. McCloud, would you state your full name to the Court, please.

A. Harry McCloud, M-c-C-l-o-u-d.

2 Q. What is your current address?

A. 2429 Locust.

3 Q. Are you currently employed, Mr. McCloud?

A. I am retired.

4 Q. On what date did you retire?

A. I believe that it was on the 12th of January, 1972.

5 Q. 1972?

MR. LAWSON: Your Honor, may the witness speak up a little bit?

THE COURT: Mr. Witness you will have to speak as loudly as you can. The attorney over at the other table needs to hear you, and we are getting a lot of noise from the outside. There is no air conditioning here and the windows are open. Mr. Witness, you will need to speak as loudly as you can.

A. I think it was January 12, 1972.

6 Q. Were you previousiy employed before your retirement?

A. At Stran Steel Corporation.

7 Q. When were you first employed?
Is that Stran, S-t-r-a-n?

A. Right.

8 Q. When were you first employed by Stran Steel?

A. I think that it was June 26, 1964.

9 Q. During the year of 1970, sir, were you continuously employed by Stran Steel?

A. Yes, sir.

10 Q. Throughout the period of employment by Stran Steel, sir, were you a member of any Local Union organization?

A. 3489, sir, United Steelworkers.

11 Q. Was that true also during the year of 1970?

A. Right [23]

* * * *

[44] needed to attend at all in order to receive credit for that meeting.

THE COURT: Why don't you just ask the witness that question then?

MR. SERWER: All right.

THE COURT: Does this man keep the records?

MR. SERWER: Your Honor, I do not believe that he is the primary person that kept the records at the Hall.

And perhaps he may not have personal knowledge of that, and perhaps I could ask him.

May I ask him?

THE COURT: Well it has been stipulated here that the average attendance—

MR. SERWER: Was 47.

THE COURT: Was it 47 or 57?

MR. SERWER: 47.

That, Your Honor, only reflects the number of people signing the register.

THE COURT: Mr. Lawson, is that true?

MR. LAWSON: Your Honor, I think that the attendance records are kept by the person signing the register.

THE COURT: What paragraph is it that says what the average meeting attendance is?

(Whereupon Mr. Lawson tendered a document to the Court.)

THE COURT: It has been stipulated that the average meeting attendance at the Union meeting during this three-year period —I do not see the paragraph here, however, counsel says that it is "47"; is that correct?

MR. LAWSON: Correct, Your Honor.

MR. SERWER: Paragraph 9-C, Your Honor.

THE COURT: It is "47".

MR. SERWER: Right.

THE COURT: Mr. Witness, you said that you attended ten or twelve meetings —

I see. It says 47 members per meeting and this is 9-C.

Mr. Witness, you said that you attended ten or twelve meetings: In your opinion, would there be as many as 47 persons there each time, or not?

WITNESS McCLOUD: In my opinion, that is entirely wrong.

You could not get that many out.

We have had a lot of meetings when you were lucky to get ten men there to constitute a meeting.

THE COURT: I see.

For the purposes of the record, Mr. Witness, if you wanted to come and stay a while, you could then come in and sign the register and leave at will?

WITNESS McCLOUD: Yes, sir.

THE COURT: Is that correct?

WITNESS McCLOUD: Yes, sir.

THE COURT: Did you do that sometimes, yourself?

WITNESS McCLOUD: I remember that on two occasions I did.

THE COURT: Did you hold a position in the Union?

WITNESS McCLOUD: I held no office in the Union while I was there, other than the tellers job.

THE COURT: Were you appointed or elected?

WITNESS McCLOUD: Appointed.

THE COURT: Do you have further questions, Mr. Serwer?

MR. SERWER: One moment, Your Honor.

(Whereupon a conference was had among co-counsel.)

MR. SERWER: No further questions of this witness, Your Honor.

Your Honor, I would like to call the next witness.

THE COURT: Just a moment.

Counsel would like to cross-examine.

MR. SERWER: Thank you, Your Honor. I am sorry.

THE COURT: Mr. Lawson, you may cross-examine.

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

92 Q. Mr. McCloud, from the period of 1967 to 1970: There were two meetings per day; is that correct?

A. Yes, sir.

93 Q. In other words, sir, so that other people on different shifts could attend the meetings?

A. Yes, sir.

94 Q. So when you say that you attended certain meetings, sir, you did not say that you attended both meetings?

A. No.

95 Q. You were a member of this Local from 1964 until [47]

* * * *

[58] WILLIAM A. LOWE, JR., a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

1 Q. Would you state your name, please.

A. William A. Lowe, Jr.

2 Q. Your current address?

A. 2413 South 8th.

3 Q. What city, please?

A. Terre Haute.

4 Q. Are you currently employed?

A. Yes.

5 Q. By whom?

A. Stran Steel.

6 Q. How long have you been employed by Stran Steel?

A. Approximately six years.

7 Q. Are you a member of any Local Labor Organization?

A. Yes. Local 3489.

8 Q. How long have you been a member of that Local?

A. For approximately six years.

9 Q. Were you a member of that Local in June of 1970?

A. Yes, I was.

10 Q. I will now refer you to the date of June 22, 1970: Did you have an occasion to vote in a Local Union [58]

* * * *

[67] THE COURT: Proceed, Mr. Serwer.

(Continuing)

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

49 Q. Can you recall the number of voters that went to the back room to vote? Sir, this would be during the period of time that you were there in the Hall.

A. Personally, sir, I did not see anyone carry a ballot into the back of the Hall.

50 Q. During the three-year period, sir, during June of 1967 through May of 1970: Did you attend any Local Union meetings?

A. Yes, sir, I did.

51 Q. How many, sir, if you can recall?

A. Approximately ten.

52 Q. Did all of the members at the meetings that you attended, sir, did they come in on time or did some of them come in late?

A. There was always somebody that came in late.

53 Q. Did you ever observe persons coming in late and signing the attendance register?

A. Oh, yes.

54 Q. Similarly, during the meetings that you did attend, during this three-year period: Did all of the members at the meeting, sir, did they stay until the end of the meeting?

A. No. They would come and go at any time.

55 Q. Can you recall how frequently persons left early?

A. Oh, it usually happened at every meeting. They would get up and leave or come in late. Sir, this would happen at every meeting.

56 Q. Did you ever leave early?

A. Yes, I have.

57 Q. On those occasions, you had signed the attendance register?

A. Oh, yes.

58 Q. Did you ever come in late?

A. No. I never did come in late.

59 Q. Can you recall on those occasions that you came into the Hall, sir, how early you might have left?

A. I usually stayed fairly long for the meeting.

After they had started the old business and finished—and if there was anything that I wanted to stay for, and after that was over with, sir, then I left.

60 Q. Did you observe other persons leaving early?

A. Oh, yes.

61 Q. And how early did they leave?

A. There were some that came in and signed and turned around and left before the meeting started.

MR. LAWSON: Your Honor, I would object to all of this. This seems to me that it is very speculative and it seems to me that it has little or no probity value, or any relationship to this issue.

MR. SERWER: Your Honor, I am talking about —

MR. LAWSON: Your Honor, we are talking about a period of 36 months, three years, and whom could have gone in or out — and it is obvious that the witness is attempting to be cooperative, and he is not testifying to any real personal knowledge as to the conduct of the meetings.

THE COURT: I think that your objection goes to the weight of the testimony. It is rather evident, and the testimony as to the attendance is given and it is not related to any particular meeting within the three-year period, Mr. Serwer.

In other words, the objection is overruled.

Mr. Witness, did you ever hold any office in the Union?

WITNESS LOWE: No, I have not.

THE COURT: It has been stipulated here that an average of 47 persons attended each meeting; and that would be more for one meeting and less at others. Would that seem like a correct figure? Sir, would this be too many or would this be too few, as an average?

WITNESS LOWE: Forty something?

Your Honor, I would say that was too many.

MR. SERWER: Your Honor, I would like to make something clear here. To the extent that this witness personally attended a split meeting, meaning one of two meetings held per month, Your Honor, he would have no knowledge as to the total number — he only attended one meeting of the split meetings.

Your Honor, the questions that I have asked do not go to whether there were 47 persons present at any one individual meeting. Your Honor, the question goes to whether a member can come in and sign in and leave, and whether he receives credit for that meeting. Your Honor, then he could subsequently run at some years later for an office, and he in fact, had never attended a meeting by merely signing and leaving, or whether he had attended just a half of a meeting.

MR. LAWSON: Your Honor, I think better proof should be offered to establish that than what has been testified to here.

MR. SERWER: Your Honor, I simply indicated as to what this line of testimony is going to.

I thought there was some confusion here as to the line of questioning and I wanted to clarify that.

THE COURT: That goes to the weight of the evidence. It indicates that the man had enough interest to come in and sign the register, regardless of how long he did stay.

MR. SERWER: That may be true.

THE COURT: Can this witness explain for us the arrangement of the split meetings?

MR. SERWER: Your Honor, I think that Mr. Lawson would know, and I am sure that he may be willing to stipulate, and I think this is within the stipulation: The Local Union had two meetings per month so as to accommodate the different shifts.

THE COURT: The day shift and the night shift?

MR. SERWER: Yes, Your Honor.

Then there was a period of where they only had one meeting on Sunday.

MR. LAWSON: Your Honor, that is paragraph 9-B of the stipulation.

MR. SERWER: That is correct.

THE COURT: Let the record so show. The matter is stipulated. Mr. Serwer, you may continue.

(Whereupon a conference was had among co-counsel.)

MR. SERWER: No further questions.

THE COURT: Mr. Lawson, do you have any questions of this witness?

MR. LAWSON: A few, Your Honor.

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

62 Q. Mr. Lowe, do you know how many chairs there were in the Union Hall on the election day?

A. The exact number, no.

63 Q. Could you estimate, approximately, sir?

A. I would say approximate one hundred to one hundred twenty chairs.

64 Q. So at any time that these people wanted to, sir, was there any restrictions for any one of the [72]

* * * *

[76] THE COURT: You may call one more short witness before we recess for noon.

MR. SERWER: Your Honor, at this time the Government will call Mr. Frye.

B. G. FRYE, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

1 Q. State your name, please.
A. B. G. Frye.
2 Q. What is your address?
A. 1304 South 7th, Terre Haute, Indiana
3 Q. Are you presently employed?
A. No.
4 Q. Have you been previously employed?
A. Yes, sir.
5 Q. When was your position terminated?
A. Yesterday at 4:00.
6 Q. By whom were you employed?
A. Stran Steel Corporation.
7 Q. When were you first employed by Stran Steel?
A. In 1963.
8 Q. Has your employment been continuous, or were there [76]

[82] WITNESS FRYE: Everybody was voting in front of everybody; the walls, chairs, the table and the officer's bench.

THE COURT: Was there any campaigning for the officers going on there at that time?

Were you doing any campaigning for yourself?

WITNESS FRYE: None, Your Honor, other than being there.

THE COURT: Other than just being there. Was anyone campaigning for Mr. Uzzell?

WITNESS FRYE: No, sir.

THE COURT: Continue, Mr. Serwer.

(By Mr. Serwer)

41 Q. During the period of June of 1967, and May of 1970, can you recall how many Local Union meetings you attended?

A. According to the record, sir, it was stated that at that time I attended 35 out of 37 meetings.

42 Q. During the period of June of 1970 and May of 1973, sir, do you know how many meetings you attended during that period of three years?

A. It would be the same amount of meetings.

43 Q. Now, sir, can you describe what happens when a person walks into the room, typically, into a Union meeting? [82]

* * * *

[86] approach to this case is really way beyond the latitude that should be given to the Government, and the issues that they are talking about, Your Honor.

THE COURT: Well, the Court does not want to predetermine the issue. However, it shows wide latitude was extended to anyone that wanted to show any interest in the Union meetings. All that you had to do was come and sign up, and leave at will. You could come in late and there was no one there to say that you were late, and that we are not going to record you for this meeting; is that correct?

MR. LAWSON: Precisely.

I don't know whether the Government is seeking to argue that you cannot run for office unless you stay for the whole doggone meeting; I don't think that is what they are after. However, I am not quite sure.

MR. SERWER: Your Honor, well —

THE COURT: Mr. Lawson, your objection is overruled.

You may continue your questions.

Counsel may argue this later.

52 Q. To your knowledge, sir, during this three-year period had

anyone ever been reprimanded for arriving late for a meeting, after the meeting had started?

A. No.

53 Q. How often does that occur? How often did that occur during that period?

A. At every meeting.

54 Q. How many people did arrive late?

A. It varied at different meetings. However, there were many people coming in late. Sir, I could not set down an actual number, that would be impossible.

I have seen the time when ten or fifteen guys would show up late.

55 Q. Is there any rule, to your knowledge, prohibiting a person from signing in and leaving early?

A. No.

56 Q. Has anyone ever been disciplined for doing that?

A. No.

57 Q. To your knowledge, has that occurred?

A. Has what occurred?

58 Q. A person signing in and leaving early?

THE COURT: The Court considers that irrelevant.

A. Some people sign in and leave right away, — as long as they get their name on the book.

59 Q. To your knowledge, sir, was it the general custom between June of 1967 and May of 1970, for persons upon entering the room to sign the register?

MR. LAWSON: I think that he has already answered that question.

He testified that the first thing when they came in was to sign the register.

Your Honor, that would be repetitious.

MR. SERWER: Will you stipulate that that was his answer?

MR. LAWSON: I think that it is a matter of record.

THE COURT: I think he just changed his answer.

What is your answer to that question, Mr. Witness?

WITNESS FRYE: He stated a date here.

It is customary now, and we are pushing the guys to sign the book. We realize the mistake there. But prior to 1970, Your Honor, the average man would just come in and sit down.

We started pushing the fact that we had to keep the attendance record in order for the men to run for office. Since that election, Your Honor, we have pushed it and made sure that the men sign the books.

Up until that time quite a few of the men would walk in and sit down and not even sign the book at all, and there was no effort made to have them sign it.

THE COURT: In your opinion, has the attendance increased within the last three years, over the prior three years?

WITNESS FRYE: Your Honor, I would say, yes.

THE COURT: Who keeps the records of the attendance now?

WITNESS FRYE: The recording secretary keeps the books. However, nobody sits at the door.

THE COURT: The book is back at the door near the entrance so that the members can sign in? And someone makes the statement that if you want to be recorded as being here, you will have to sign the book?

WITNESS FRYE: The people in the Hall usually tell them to sign the book.

THE COURT: Proceed, Mr. Serwer.

MR. SERWER: Just one moment, Your Honor.
No further questions, Your Honor.

THE COURT: Mr. Lawson.

MR. LAWSON: Just one moment, Your Honor.
(Whereupon a conference was had among co-counsel.)

CROSS-EXAMINATION,
QUESTIONS BY MR. LAWSON:

60 Q. Mr. Frye, you lost in the 1970 election; is that correct?

A. Yes.

61 Q. Thereafter, Mr. Uzzell, who was the winner, sir, he moved up to foreman in the company; is that correct?

A. This is correct.

62 Q. At that time the vice-president of the Local moved up to president?

A. Yes.

63 Q. Then was there an election between you and Mr. Jet for vice-president?

A. Yes I would say so.

Sir, I was a trustee at the time —

64 Q. That you ran for office against Mr. Jet?

A. Yes.

65 Q. In that election, sir, was that election conducted the same way as the election in 1970?

A. All of our elections are handled pretty much the same way, with the exception of this last one.

66 Q. You lost that election to Mr. Jet; is that correct?

A. By some twelve or fifteen votes, yes.

67 Q. Did you ever protest that election?

MR. SERWER: Your Honor, this is entirely outside of the scope of direct examination.

Your Honor, I fail to see the relevancy —

MR. LAWSON: Your Honor, I think that he is alleging that it is unfair —

MR. SERWER: It is outside of the scope of direct examination and I fail to see the relevancy —

MR. LAWSON: He is alleging that it is unfair, and he ran again in another election, and he lost by much less margin, and he did not protest, sir, under the same conditions.

This is extremely relevant.

MR. SERWER: Your Honor, one election has nothing to do with the other election.

We are talking about whether the election held in June 22, 1970, was by a secret balloting [91]

* * * *

[97] you then get credit for that meeting?

A. Yes.

95 Q. What is the minimum length of time that you spent at a meeting?

A. Myself?

96 Q. Yes.

A. As an officer, I generally tried to attend the whole thing.

97 Q. Prior to your being elected an officer, sir, how long would you stay?

A. I would say that it would vary.

We are talking about quite a time.

98 Q. All right.

Let us pass on from that.

Since 1963, sir, there have been elections every three years; regular election for officers, right?

A. Yes, sir.

99 Q. Have there also been other elections in between?

A. Yes, sir.

100 Q. Is the reason for those other elections, sir, because of vacancies?

A. Yes, sir.

101 Q. —people resigning from office?

A. Yes.

102 Q. Is it fair to say that during the ten years that you have been with the Local, sir, that there has been a large turnover in officers within the Local?

A. I would say, yes.

103 Q. In the election in 1970, the winner, Mr. Uzzell got 154 votes, and you received 79; is that correct?

A. I would not know for sure.

104 Q. Is that approximately right?

A. I have no idea right now.

I was probably told at the time but I do not remember right now.

If that is what you say, it must be true. I do not remember.

MR. LAWSON: One minute, Your Honor.

(Whereupon a conference was had among co-counsel.)

105 Q. Mr. Frye, you were elected to vice-president, sir, of this Local since 1970; is that correct?

A. Yes.

106 Q. You ran unopposed for that office; is that correct?

Did Mr. Stewart oppose you, let me ask you [98]

* * * *

[101] RECROSS-EXAMINATION,
QUESTIONS BY MR. LAWSON:

117 Q. Were you instructed not to go to the chair to mark your ballot?

A. No, sir.

118 Q. Or anywhere else?

A. No, sir.

THE COURT: You mentioned that you were terminated at Stran Steel: Did they have a layoff or something?

WITNESS FRYE: No. I got fired the other day because of Union activities.

THE COURT: Are you a candidate in this next election?

WITNESS FRYE: Yes, Your Honor.

THE COURT: For what office?

WITNESS FRYE: President.

THE COURT: President.
Who else is a candidate for president?

WITNESS FRYE: Mr. Clay Jet, Mr. Forsythe and a Mr. Davis.

THE COURT: Do they all fill the requirements of having attended the necessary meetings?

WITNESS FRYE: Three of them have and one has not.

THE COURT: Does Mr. Forsythe qualify again?

WITNESS FRYE: Yes, he does.

THE COURT: What was the fourth person's name?

WITNESS FRYE: Davis.

THE COURT: He does not qualify?

WITNESS FRYE: No, sir.

THE COURT: I have no further questions.
Would either counsel have any additional questions?

MR. SERWER: No further questions, Your Honor.

RE-RECROSS-EXAMINATION,
QUESTIONS BY MR. LAWSON:

119 Q. Have you called that to the attention of the election officers, that Mr. Davis does not qualify?

A. That is not my job.

120 Q. Would you object to him running against you?

A. No, sir. I think that he is a very intelligent person.

121 Q. Thank you.

MR. LAWSON: Thank you, Your Honor. [102]

* * * *

[108] DAVID LEROY JONES, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,
QUESTIONS BY MR. SERWER:

1 Q. What is your name, please?

A. David Leroy Jones.

2 Q. What is your current address?

A. 29 Oakland Avenue, Terre Haute, Indiana.

3 Q. Were you ever employed by Stran Steel?

A. Yes, sir.

4 Q. During what period of time?

A. May of 1967 up until September of 1970.

5 Q. At that time did you leave your employment?

A. Yes, I did.

6 Q. During this period that you were employed by Stran Steel, sir, was that work continuous?

A. No. I was in the service during this period of time, also.

7 Q. Do you recall the dates that you were in the service?

A. June of 1967, sir, until June of 1969.

MR. SERWER: Your Honor, I would ask that the Court Reporter mark this document for identification?

THE COURT: The Reporter will mark the document.

(Whereupon the Court Reporter marked a document for identification.)

8 Q. Mr. Jones, I will hand you what has been marked as Government's Exhibit No. 2. It purports to be a document DD2-

14, and the person named therein is named "David Leroy Jones", and can you describe what this document is?

A. It is a DD2-14, and it is a release from active duty.

9 Q. For what person?

A. Myself.

10 Q. Is the information thereon, sir, true and correct, to the best of your knowledge?

A. Yes, it is.

MR. SERWER: Your Honor, I move that this document be introduced in evidence; offered and received in evidence.

MR. LAWSON: Your Honor, I rise to ask for what purpose is this offered?

MR. SERWER: Your Honor, to firmly establish the dates that the witness was in military service.

THE COURT: I do not think there is any dispute about it. Show the exhibit admitted in evidence.

(Whereupon Government's Exhibit No. 2 was admitted in evidence.)

(Here insert)

THE COURT: Continue, Mr. Serwer.

11 Q. Mr. Jones, what was the exact day of your entry into military service?

A. June 27, 1967.

12 Q. What was the date of your release from military service?

A. June 26, 1969.

13 Q. Would you describe in chronological order, sir, your location geographically while in the military service during this period of time?

A. I first went to basic training at Fort Campbell, Kentucky. Sir, from there I went to AIT down in Alabama, and back to Fort Campbell for a regular duty assignment and I was there until about September of 1968.

14 Q. Continue.

A. And until I was released I was at Fort Riley, Kansas.

15 Q. During your two-year period, sir, what was your closest location to Terre Haute, Indiana?

A. About 220 to 230 miles.

16 Q. For how long a period of time during this two-year period?

A. About 9 months.

17 Q. Referring you now to the year of 1970: When did you return from service? Was that June of 1969?

A. Yes.

18 Q. Did you go back to your employment?

A. Yes, sir.

19 Q. At what employer?

A. Stran Steel.

20 Q. Did you attend any Local Union meetings during this period of time?

A. I did attend a few of them.

21 Q. I'm sorry.

A. After I returned.

22 Q. In the month of May, 1970: Were there nominations for Local office?

A. Yes, sir.

23 Q. Were you nominated at that time?

A. I was.

24 Q. On the date of June 22, 1970, sir, was there an election of officers?

A. There was.

25 Q. Did your name appear on that ballot?

A. It did not.

26 Q. Had you ever received any notification prior to the day on which the election was held, sir, that your name would not appear on that ballot?

A. No idea.

27 Q. Did you receive any information on the day of the election, sir, as to why your name was not on the ballots?

A. No, I did not.

28 Q. Calling your attention to the 22nd day of June, 1970: The election was held at the Union Hall; is that correct?

A. Yes, it was.

29 Q. On 13th Street?

A. Yes, it was.

30 Q. What were your hours of work during this day?

A. From 8:00 to 4:00, I believe.

31 Q. What time of day did you vote?

A. It was after I got off work at 4:00.

32 Q. About what time of day, sir; do you have any idea?

A. Between 4:15 and 4:30, I believe.

MR. LAWSON: Your Honor, could the witness speak a little more loudly?

THE COURT: The witness is reminded to [112] * * *

* * * *

[116] meeting Hall: Approximately, sir, how many persons, including yourself, were in the Hall?

A. Twenty, twenty-five or thirty.

MR. SERWER: Excuse me, Your Honor.

(Whereupon a conference was had among co-counsel.)

MR. SERWER: Your Honor, I have no further questions.

THE COURT: Any questions, Mr. Lawson?

MR. LAWSON: Yes, Your Honor.

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

52 Q. Mr. Jones, you had not attended eighteen meetings, obviously, between May of 1967 and June of 1970; is that correct?

A. No. Not actually.

53 Q. You were in the Army for two years; is that correct?

A. Yes, sir.

54 Q. In the year that you returned, sir, how many meetings did you attend?

A. I cannot say offhand. Sir, it was two or three for sure. I made up there —

55 Q. When you were nominated, sir. did you talk with anyone or did you check with anyone concerning the —

A. Yes, I did.

56 Q. — concerning your eligibility?

A. Yes.

57 Q. Continue.

A. I asked two or three of the men down there and they said that the service counted as part of my being — the same as being on the job.

58 Q. Did you talk with the election tellers?

A. No, I did not.

59 Q. Did you talk with the president of the Local?

A. No, I did not.

60 Q. When you say "men", do you mean other members of the Local?

A. Other members of the Local.

61 Q. Nonofficers?

A. No. I do not believe that they were. I could not tell you offhand whether they were or not.

62 Q. Am I correct: You did not pay dues while you were in the military?

A. No.

63 Q. At the time that you say that you voted: Sir, did you say there were twenty or twenty-five people in the Hall; is that correct? [117]

* * * *

[121] THE COURT: You may call your next witness, Mr. Serwer.

MR. SERWER: Your Honor, I will call Mr. Wilford Wassel.

WILFORD WASSEL, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATIONS,

QUESTIONS BY MR. SERWER:

1 Q. Would you state your name, please.

A. Wilford Wassel.

2 Q. Will you spell your last name?

A. Yes. It is W-a-s-s-e-l.

3 Q. What is your current address?

A. 2632 South 7th.

4 Q. Terre Haute?

A. Terre Haute, Indiana.

5 Q. Are you currently employed?

A. Yes.

6 Q. Who are you employed with?

A. Stran Steel Corporation.

MR. LAWSON: Your Honor, I would request that counsel keep his voice up.

THE COURT: Speak as loudly as you can so that everyone can hear.

7 Q. Are you a member of Local Union 3489?

A. Yes, sir.

8 Q. This would be of the United Steelworkers of America?

A. Yes, sir.

9 Q. Were you a member of this Local Union at the time of the June 22, 1970 election at the time of the election for Local officers?

A. Yes, sir.

10 Q. Did you vote in that Union election for officers on June 22, 1970?

A. Yes, sir.

11 Q. Where did you cast your ballot?

A. At the Union Hall.

12 Q. What time did you arrive at the Union Hall on that day?

A. It was approximately between a quarter after and a quarter until five. I cannot give you the exact minute, sir.

13 Q. Do you recall how long you were in the Union Hall when you voted?

A. The total length of time when I arrived in the door and when I left?

14 Q. That is right. [122]

* * * *

[128] There was conversation going on and what they were saying, I do not know specifically.

41 Q. Mr. Wassel, turning to the Union meetings: During the period of June of 1967 and 1970, the three years just prior to the June 22, 1970 election —

A. Okay.

42 Q. Did you attend any of the Union meetings during that period?

A. Yes, I did.

43 Q. Do you recall the number of meetings that you attended?

A. It was either seven or nine meetings during all of those three years.

I did not attend all of the meetings.

44 Q. Was it your custom to sign the attendance register upon entering, or arriving at the meeting?

MR. LAWSON: I am sorry. I did not hear the question. Counsel, please keep your voice up?

MR. SERWER: Yes.

45 Q. Was it your custom upon arriving at a meeting, sir, to sign your name on the attendance register?

A. Yes, sir.

46 Q. In fact, at the meetings that you did attend: Did you, in fact, sign the register upon arriving at the meetings?

A. Yes, I signed.

47 Q. Did you ever, sir, on occasion arrive at the meeting late and sign in?

A. Yes, sir.

48 Q. Do you recall the number of meetings that you arrived late at?

A. Well —

49 Q. During that three-year period?

A. It is hard to say that I attended the meetings and wrote my name.

I would not know the exact number on how many times I was late.

50 Q. Do you have any idea how late you were and what they were doing when you arrived late?

A. They would be reading the old business.

At that time I would say that it would be about ten to twelve minutes late.

51 Q. Did you ever, on occasion, sir, after signing in late at a meeting, leave the meeting prior to the end of the meeting?

A. Yes.

52 Q. How many times did you do that?

A. I would say three times. Roughly, I would say about three times.

Sir, this could vary one either way.

53 Q. Do you recall what the earliest time after the start of a meeting, sir, that you left after signing in?

A. It all depended on how mad I got.

54 Q. Can you recall the approximate number of minutes after the start of the meeting, sir, that you left after signing in?

A. Twenty-five to thirty minutes.

55 Q. What was the usual length of a meeting, sir; the ones that you attended?

A. One hour — forty-five minutes.

56 Q. Is that one hour and forty-five minutes, sir?

A. One hour and forty-five minutes.

57 Q. With regard to those meetings that you attended during the three-year period: Did you observe any other Union members who had signed in — signing the meeting attendance register and they left early before the end of the meeting?

A. Yes.

58 Q. Do you recall the number of other Union members, sir, the ones that you saw sign in and leave early?

A. Well a lot of people walked out during the middle of a meeting.

Sir, this would be a big variation in number. Do you want the overall average?

59 Q. Can you tell us the approximate number at any given meeting, sir; the ones that you attended?

MR. LAWSON: I think this line of testimony and this inquiry is unspecific.

Your Honor, I would like to have this pinned down more.

Your Honor, this line of questioning is objectionable.

MR. SERWER: Your Honor, this is —

MR. WASSEL: Your Honor, I do not know that "average" and "indeed", I do not know if they make much sense.

MR. SERWER: Your Honor, I think that he is able to testify to the average number of Union members that walked out at any given meeting.

MR. LAWSON: Is it two, three or four —

THE COURT: The objection is overruled. The witness may answer.

A. Several.

60 Q. Do you recall, sir, observing any other Union members arriving late and signing in at their late arrival time?

A. Yes.

It is back there for them to sign when they come in.

61 Q. Do you recall the number of Union members that you saw engaged in that activity? Sir, this would be at the meetings that you attended?

A. Would you repeat that question?

62 Q. Do you recall the number of Union members, sir, the ones that engaged in that activity of arriving late and signing in at their late arrival?

A. With an average of fifteen people there at the meeting, sir, it would vary from two to three people. Sometimes it would be more and sometimes it would be less.

63 Q. On occasion, sir, did you ever see somebody sign in late — did you ever see someone else sign a name besides his own?

A. Once I seen a man sign two names.

64 Q. Continue.

A. I do not know who he signed, but I seen him write two names.

Whether he was signing in for someone that would possibly be there later, or maybe they had been there and left and had forgotten to sign their name — sir, I don't know.

However, I did see him sign two names.

65 Q. Can you tell us whether you ever observed anybody sign in on the register at the beginning of the meeting and leave immediately thereafter?

A. Yes. I saw it for an emergency.

MR. SERWER: No further questions, Your Honor.

THE COURT: You said "emergency", Mr. Witness; what particular person do you remember doing that? Do you remember any particular incident?

WITNESS WASSEL: Yes, Your Honor.

THE COURT: Tell us who that was?

WITNESS WASSEL: Who the person was?

THE COURT: Yes.

WITNESS WASSEL: Roy Mix.

THE COURT: Do you remember what his emergency was?

WITNESS WASSEL: He had to go and pick his wife up.

THE COURT: When would this have been?

Was it before 1970, Mr. Witness? Was it near 1970 —

WITNESS WASSEL: I would say that it was in the year of 1969.

Your Honor, I could not even give you the exact date on it.

There were a lot of people that would stay there; they would sign in and stay there for the old business and then they would leave.

THE COURT: Okay.

WITNESS WASSEL: It happens.

THE COURT: Mr. Lawson, you may cross-examine.

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

66 Q. Mr. Wassel, in 1970 there was a nomination meeting held in May; is that correct?

A. True.

67 Q. Were you nominated for any offices?

A. No. I was not, sir.

68 Q. Have you ever been an officer in the Union?

A. No.

69 Q. How long have you worked for Stran Steel in this Union?

A. Since August of 1967.

70 Q. You are here under subpoena?

A. Yes, sir.

71 Q. At the time that you voted in June of 1970: You signed in, as I recall, and you received your ballot and then you marked your ballot at what [134] * * *

* * * *

[143] sitting in chairs and voting.

On the other hand by use of personal ingenuity a person could very likely cover his own particular ballot, if he wanted to prevent other people from seeing his ballot, or seeing how he voted. Also if he did not care whether other people saw him, then he probably voted in a different fashion and did not cover up his ballot.

I would say that the conclusion is that the conduct of the voting process is such that no one is encouraged to vote in secret; even though there was no one there who was preventing it. Any individual could have separated himself from the group so that while he marked his ballot, it would not have been seen.

In reference to the attendance at Union meetings, it seems there was a sign-in book, at least from June of 1967 to May of 1970, which was a three-year period prior to the 1970 election.

Again, it was done in what might be described as an informal manner; it was a sign-in book or a registration book that was located there. The very nature of this book was such that, and various witnesses have testified, a person could come in and he could be late and he could sign in and get credit for attendance. He could sign in and stay any length of time that he might desire and then he could leave early if he so chose and he would still get credit for attendance at that meeting. The registration book, or the sign-in book, apparently is in the custody of the recording secretary. And since the events leading up to this cause of action here, it would appear that there has been more attention paid to the fact of being certain that each member signed in if he wanted to receive credit for attendance at a meeting.

That does not cover everything that has been testified to here, and special testimony has been received on other matters, and the testimony of Bernard Frye who ran for office. I would consider this to be the common thread of testimony running through these five witnesses.

What additional has been running in common in their testimony that the Court has not stated, Mr. Serwer?

MR. SERWER: Your Honor, may I have approximately thirty seconds to confer with my co-counsel?

THE COURT: Certainly. [144]

* * * *

[148] That new witnesses should only testify to new matters and you should avoid further evidence or repetition on these subjects.

With that, Mr. Serwer, you may go ahead and call any additional witnesses that you see fit.

MR. SERWER: At this time I would call Mr. David Shadrach.

DAVID R. SHADRACH, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

1 Q. Would you state your full name for the Court, please?

A. Yes. David R. Shadrach.

2 Q. Your current address?

A. My business address is 36 South Pennsylvania, Indianapolis, Indiana.

3 Q. Your present occupation?

A. I am a Residence Compliance Officer for the Labor Management Services Administration of the United States, and the Department of Labor.

4 Q. How long have you been so employed?

A. Since 1962.

5 Q. Can you roughly describe the function of a Residence Compliance Officer?

A. Our agency administers three statutes and one executive order. One of which is the Labor Management Reporting and Disclosure Act, and part of that Act contains Title IV. Title IV consists of the minimum standards of controlling a Local Union election, officer election.

6 Q. At some time subsequent to June 22, 1970, sir, were you assigned to conduct an investigation?

A. Yes.

7 Q. — of the election of officers that was held in June of 1970? Sir, that is June 22, 1970.

A. Yes.

8 Q. Of Local 3489?

A. Yes, sir.

9 Q. I will show you what has already been marked as Exhibit D. This is attached to the Stipulation of Facts — Your Honor, this is attached to Exhibit No. 1 and it has already been admitted in evidence — sir, I will ask you if you recognize that document?

A. Yes, I do.

10 Q. What is that document?

A. That document was presented to me by Mr. Baker, the Mr. Baker that was the recording secretary at the time of the investigation of the Union election.

Mr. Baker stated that this was placed on a bulletin board in advance of the nominations.

This list represents members who attended in excess of fifteen meetings during the three-year period involved.

11 Q. There are two groups of members here.

Your Honor, let the record show there is one group containing twenty-two names: Is that correct, Mr. Shadrach?

A. Yes.

12 Q. And above that it states: "Members eligible to run for office", sir, with eighteen meetings or more?

MR. LAWSON: Your Honor, this has all been stipulated to in the record.

MR. SERWER: That is correct. However, I am leading into some questions that are not in evidence at this time.

THE COURT: At this point, Mr. Serwer, the Court thinks it would be appropriate to say, and with reference to the specific points, and just ask him the questions or; you do not need to explain to the Court how this came about.

You and the other counsel have stipulated to it and the Court would assume that it had to be furnished either by the Labor Union or by somebody that was keeping the records; everybody agrees that this is right.

Rather than telling me how each of these stipulations came about, you can just refer to the stipulation in the exhibit and ask your questions about it.

13 Q. Mr. Shadrach, referring you to Government's Exhibit B that is attached to Government's Exhibit No. 1, and it is in evidence —

A. Yes.

14 Q. Prior to your receiving of that document from Mr. Baker: Sir, did you analyze the attendance record, or records, or the attendance register of the Defendant Local to ascertain the number of persons who had attended, sir, the number of persons who had attended at least eighteen or more meetings?

A. No. It was after I received the list from Mr. Baker.

Mr. Baker produced his work sheets that he had computed. He had computed the attendance for each and every member who was listed on the attendance register for this period of time.

15 Q. Did you, yourself, look at the attendance register?

A. Oh, yes.

I compared Mr. Baker's work sheets with the attendance record.

16 Q. What did you find?

MR. LAWSON: I would object to any testimony about the attendance records.

The best evidence to that would always be the register, Your Honor, itself.

MR. SERWER: Your Honor, I could have subpoenaed that document, or the documents, sir, from the defendants, but I did not think there would be any substantial objection here. I was not able to do so in view of the short time for trial.

Your Honor, the defendants can certainly bring the register in, if it proves, if they so desire, if Mr. Shadrach's testimony proves anything other than the register itself.

The register is in the possession of the defendants.

MR. LAWSON: I really don't know.

THE COURT: What is the purpose of this line of questioning, Mr. Serwer?

MR. SERWER: I am simply trying to verify that his independent investigation confirms the fact that persons on this list were, in fact, the only persons who had their names appear on the attendance register at least eighteen times.

MR. LAWSON: We stipulated to that.

MR. REESE: Your Honor, we stipulated to that.

MR. SERWER: Will you stipulate to what I just stated?

MR. LAWSON: Is that any different from what we have already stipulated to?

THE COURT: I will ask the questions.

Mr. Shadrach, did you vertify the list of those persons eligible to run for office?

WITNESS SHADRACH: Yes, sir.

THE COURT: According to the records?

WITNESS SHADRACH: Yes, Your Honor.

THE COURT: Did this support the list that is labeled as Exhibit "D"?

WITNESS SHADRACH: Yes.

THE COURT: All right. That will cover the matter.

17 Q. Subsequent thereto, Mr. Shadrach, did you have an occasion to examine work records of Stran Steel Corporation to determine whether any persons had worked according to their records on days that would conflict, days that conflicted with the Union meetings?

A. Yes.

18 Q. What did you determine?

A. Based on the analysis of the attendance register, and the work credits, sir, there were no other members of Local 3489 whose name appeared on the register as having attended fifteen or more meetings; other than the twenty-five names on the list that was provided to me by Mr. Baker.

19 Q. Okay.

A. With the exception of Mr. LaRue with clock number 524, and he attended sixteen meetings and they found out that he worked nine times that would be in conflict with the meetings. Therefore, the sixteen plus nine would be twenty-five —

MR. LAWSON: At this time I would object to any further testimony. It is obvious that this is hearsay, Your Honor, without any records being here, or being produced.

MR. SERWER: Well, Your Honor, again, this is an attempt to save the laborious task of going to Stran Steel Corporation and pulling out all of those records that it would take to make this determination.

The defendant, himself, can do that—and he was aware of the substantial amount of the testimony and I offered to have the defendants stipulate to this.

Your Honor, the defendant refused to stipulate to this.

These are matters that occurred during the investigation here, and I think that they are substantially uncontested; but if necessary, we will bring in all of the records. Your Honor, we can subpoena the records and offer them into evidence to prove that this individual is the only one.

MR. LAWSON: Your Honor, if I may say in response to counsel's statement, and with his intention—Your Honor, on November 29, 1971 I served answers to interrogatories to plaintiff's counsel. At that time I suggested if they were interested in the question of

who had worked and who had not worked that they should contact Stran Steel. Evidently, Your Honor, they have not done so and they have come in with this secondhand sort of testimony.

I have no idea what Stran Steel's records say and I do not know if Stran Steel is terribly interested in giving it to me. I do not know what relevance this has, Your Honor, as a matter of fact, to the issues of which we are involved with here.

MR. SERWER: I think the work credit excuse is certainly relevant, and with the meeting attendance rule.

The defendants have stipulated that they have never made an attempt to ascertain how many people were eligible for Union office, by virtue of full credits.

The investigator here with the Labor Department, Your Honor, has done exactly that and he found one person that was, and that is certainly relevant to the meeting attendance rule.

MR. LAWSON: I do not think that could be accurately — I don't think that accurately reflects the stipulation and I would object to any hearsay testimony of what this so-called investigator or Compliance Officer — I am sorry — this Compliance Officer found.

THE COURT: Upon your investigation, Mr. Shadrach, you found one additional person who would qualify for Union office, or officer, and that was Mr. LaRue; is that correct?

WITNESS SHADRACH: Yes.
He was given an office during that same election.

THE COURT: He was actually elected?

WITNESS SHADRACH: He ran unopposed. In this same election.

In other words, there were only about twenty-two eligible, and there was no one running for this one office, and Mr. LaRue actually ran unopposed. This is why I checked the fact, and I found that he only had sixteen meetings.

Then I went to Stran Steel and I found out there were nine different times when his work schedule conflicted with him coming to a meeting, and this gave him a credit of twenty-five meetings. Therefore, Mr. LaRue was certainly an eligible officer under the eligibility rule, sir, by coincidence.

It is my understanding from Mr. Baker that they do not check work cr[illegible]s. Sir, they only check work credits when requested.

THE COURT: All right.

WITNESS SHADRACH: And no one ever requested them to check.

THE COURT: What was the office that Mr. LaRue was elected to?
What office did he fill?

WITNESS SHADRACH: Not offhand.

MR. SERWER: That is in the stipulation, Your Honor.

THE COURT: What does the stipulation say about that?

MR. SERWER: Exhibit E.

THE COURT: Where is that?

MR. SERWER: Here, Your Honor.
(Whereupon Mr. Serwer tendered a document to the Court.)

THE COURT: The Court recognizes the objection of counsel, the objection by counsel for the defendant. It may have been very proper under the circumstances, but in view of the attempt to proceed with this cause, the Court will permit counsel for the defendant to offer into evidence anything, at a subsequent date, you may file any records or any exhibits to contest Mr. LaRue's qualifications if you so desire.

MR. LAWSON: Thank you, Your Honor.

THE COURT: It would seem to me that the defendants may have waived any objections to Mr. LaRue since he was elected and he did serve.
Under that light of the Court's ruling, you may continue, Mr. Serwer.

MR. SERWER: Thank you, Your Honor.

MR. LAWSON: Just one point, your Honor.
Your Honor, I have never seen the records of Stran Steel, and I have no idea, if any, what the correlation is between the meeting times of the Local, and whether Mr. LaRue did or did not work on

those days. Your Honor, without those records I am unable to effectively cross-examine this witness.

THE COURT: It may be irrelevant.

MR. LAWSON: Of course, that has been raised by me. I hope, Your Honor. Thank you.

THE COURT: Let the record so show. Continue, Mr. Serwer.

MR. SERWER: Your Honor, I have no further questions of this witness.

THE COURT: Mr. Lawson, you may cross-examine.

MR. LAWSON: Your Honor, may I have a moment, please?

THE COURT: You may.
(Whereupon a conference was had among co-counsel.)

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

20 Q. Mr. Shadrach, Mr. LaRue ran unopposed; is that correct?
A. Yes, sir.
21 Q. That being the case —
A. I think there is a story behind this.
22 Q. I did not ask for a story.
He had meeting attendance in the appropriate eighteen — in the eighteen meetings: Sir, this would not effect his running for office; is that correct?
A. I am not in a position to interpret the constitution and by-laws.
My understanding was that during the investigation that Mr. LaRue was ineligible, and he was so posted on the board, and stated that he would be ineligible for nomination—and he attended below eighteen meetings, so he would not be eligible.
23 Q. But at some subsequent time a determination was made that he was eligible?
A. There was no determination made.
It was my understanding that no one wanted to run for that office, and therefore, sir, they nominated or picked LaRue to run unopposed for that office. There was no one left to run.
24 Q. All right.

A. And on this list he was listed as ineligible.
25 Q. That was the only discrepancy that you found in comparing that list of twenty-five; is that correct?
A. Yes, sir.
26 Q. There are approximately six hundred, sixty members of the Local, roughly?
A. Yes, sir.
27 Q. Thank you.

MR. LAWSON: That is all, Your Honor.

THE COURT: Anything further, Mr. Serwer?

MR. SERWER: One or two questions, Your Honor.

REDIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

28 Q. I believe that this has been asked. However, to be sure: Based on your investigation of the attendance register and the work credits at Stran Steel, sir, were there any other members of the Defendant Local, other than Mr. LaRue, eligible by virtue of a combination of attendance credits and work credits?
A. No.

MR. SERWER: Nothing further.

THE COURT: Anything further, Mr. Lawson?

MR. LAWSON: Let me check my notes with counsel.
(Whereupon a conference was had among co-counsel.)

MR. LAWSON: No questions, Your Honor.

THE COURT: You may step down.
(Witness Shadrach excused.)

MR. SERWER: Your Honor, I would like to request a two minute recess, please?
I would like to review my notes that I have [162]

* * * *

[170] MR. LAWSON: Thank you, Your Honor.

(DEFENDANT'S CASE)

MR. LAWSON: Your Honor, at this time I would call Mr. Clay Jet.

CLAY JET, a witness called by the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. REESE:

1 Q. State your name, please.
A. Clay Jet.
2 Q. Where are you employed, Mr. Jet?
A. Stran Steel Corporation.
3 Q. How long have you been employed there?
A. Since 1952.
4 Q. Continuously since 1952?
A. I have been laid off several times, sir, but it has been continuous service.
5 Q. Where do you live?
A. Route 1, Carlisle, Indiana.
6 Q. Are you an officer of that Local?
A. The president.
7 Q. When were you elected president?
A. I was not elected as president. I filled an office [170]

* * * *

[181] THE COURT: Well, maybe that is right. Mr. Reese, you may develop that information. The objection is sustained.

MR. REESE: Thank you, Your Honor.

58 Q. If you know, sir, how many Union meetings have you attended since the June 1970 election?
A. I would guess it would be somewhere between twenty and twenty-five.
59 Q. Before the June election of 1970, could you give us an estimate as to the number of Union meetings that you attended, or those that you missed?
A. According to the records that Mr. Shadrach checked out, sir, I attended all thirty-six meetings.
60 Q. Do you have an opinion if there have been more members attending the Union meetings since June of 1970, sir, than there had before?

MR. SERWER: Your Honor, I would object. This seems to be irrelevant.

THE COURT: Overruled.

61 Q. What was your answer?
A. I think there has been. Sir, I could not say.
62 Q. To your knowledge, has there been any other complaints filed about the elections in that Local?
A. Yes. There was a complaint filed against our last International election.
63 Q. Who was that filed with?
A. Who was it filed with?
64 Q. Yes.
A. It was filed with the International.
65 Q. Are you talking about an International election?
A. The International. It was the nominations and election.
66 Q. I was directing my question to any Local Union elections.
A. Yes.
67 Q. Is this the only one that you know of in twenty years?
A. Yes, sir.
68 Q. How many Union meetings do you have in that Local, sir, during this period of time—let's say how many meetings do you have per month, or per week?
A. We have one split Union meeting per month.
69 Q. Just briefly, sir, what do you mean by that?
A. At the present time we have a meeting on the second Wednesday of each month, sir, we have a 1:00 P.M. meeting and a 4:30 meeting. Sir, this is set up to accommodate all three shifts.
70 Q. How long has this split meeting been in effect?
A. I cannot give the exact day, but it has been quite a while.
71 Q. Three or four years?
A. Yes.

It has been in effect for approximately three years.

We had one section there where we went to a Sunday meeting for a short while, to try and pick up attendance.

72 Q. The purpose of this split Union meeting is to permit every member to attend the Union meeting if they want to; is that correct?
A. Right.
73 Q. Right after the election in June of 1970: Is that when you went back to the split meetings?

A. No. Sir, I cannot be exactly sure, but I believe that it was some time before.

74 Q. Before the June election in 1970?

A. Yes.

75 Q. Thank you.

MR. REESE: No further questions, Your Honor. [183]

* * * *

[185] MR. REESE: Your Honor, we would call Mr. Baker.

THE COURT: Mr. Bailiff, would you get the witness.

(Whereupon a conference was had among co-counsel.)

THE COURT: Have you been sworn as a witness?

WITNESS BAKER: Yes, Your Honor.

THE COURT: You are still under oath.

C. D. BAKER, a witness called by the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION,
QUESTIONS BY MR. REESE:

1 Q. State your name, please.

A. C. D. Baker.

2 Q. Where do you live, Mr. Baker?

A. Route 1, Box 194, West Terre Haute, Indiana.

3 Q. Are you employed?

A. Yes, sir.

4 Q. Where?

A. Stran Steel Corporation.

5 Q. How long?

A. Twenty-five years in July.

6 Q. Are you a member of the Local Union?

A. Member?

7 Q. Yes, are you a member of the Local?

A. Yes.

8 Q. How long have you been a member?

A. All of that time.

9 Q. Are you now an officer in the Local Union?

A. A trustee.

10 Q. Have you held any other offices in the Local Union?

A. Yes, sir.

11 Q. What offices have you held?

A. Recording secretary two different times, financial secretary and trustee once—the first time.

12 Q. Directing your attention to June of 1970—

A. Yes.

13. Q. Were you an officer at the time of the election in June of 1970?

A. No. That was the change of officers, and I did not run for office.

14 Q. Did you have anything to do with the conduct of the election?

A. Yes, sir.

15 Q. Tell His Honor what?

A. I was the teller for the election. [186]

* * * *

[193]

60 Q. Have you had an occasion to examine the minutes of the Local Union meetings?

A. Recently?

61 Q. Yes.

A. No, sir.

62 Q. What are these books (indicating)?

A. Those are minute books.

63 Q. Minute books of what?

A. Of the regular and special meetings.

64 Q. But you have not examined those?

A. Not since I was the recording secretary.

65 Q. We have a stipulation here, sir, that there was an average number of members present at a Local Union meeting: Would these minute books show exactly how many members attended?

A. No, sir. Sir, the attendance records would show that information.

66 Q. Who would have that information?

A. The recording secretary.

67 Q. Did you have it when you were the recording secretary?

A. Yes, sir.

68 Q. Again, when were you the recording secretary?

A. Up to the election in 1970.

69 Q. Up until that time you would have kept the attendance records?

A. Yes, sir.

70 Q. Tell me about that book: How was it used at the meetings?

A. Do you mean the attendance book?

71 Q. Yes. Sir, I do mean the attendance book.

A. At first we had the members to sign the sheet, a yellow—you know like the legal size paper. This has the signature of the men and their clock numbers. Then later after the meeting, I transferred this information, the signature and clock numbers into a bound book. This was the second recording.

The original minutes were kept in a file.

72 Q. By you?

A. Yes, sir.

Then a motion was made to use a ledger book, rather than using the yellow sheets.

73 Q. Was that approved?

A. Yes, sir.

74 Q. Approximately when did you go from the yellow sheets to the ledger book?

A. I imagine that it was two years ago, sir, or better.

75 Q. Continue.

A. It would tell this in the minute books.

76 Q. Now, sir, when a member attended a Union meeting, whether they were using a pad or the register: Would the member sign that pad, or the register?

A. They would sign it when they attended the meetings, yes.

77 Q. Where would this pad or register have been kept?

A. Generally it was kept at the front door as they came in.

78 Q. Would it be there during the whole meeting?

A. Yes. Sir, in most cases it was.

79 Q. Then when the meeting was over you would take it—

A. Either me or the guard would bring it up to the recording secretary.

80 Q. Would either the pad or the register be accessible to any member of that Local if they wanted to look at it?

A. Not readily, no.

81 Q. What do you mean by that?

A. It was kept in the file.

82 Q. I understand that.

Sir, if I am a member of the Local, and assume that I made a request to see that, Mr. Witness, would you have shown that to me?

A. You could have seen it in my presence.

83 Q. That is what I mean.

A. Yes, sir.

84 Q. Did you ever have any requests from any people, or members, during the time that you were the secretary, did anyone ever request to look at it?

A. Yes, sir.

85 Q. —the registration or pad?

A. Yes. It was possibly one or two times.

86 Q. Would you cooperate and let them see the book?

A. It is their book, sir, as well as mine.

87 Q. I understand that.

My question is: You would, I take it?

A. Yes, sir.

88 Q. While you were the recording secretary, Mr. Witness, did you ever receive any complaints about the way that the books and the register was kept? Sir, I am speaking of the method that you used.

A. Any complaints?

89 Q. Yes.

A. There was a discussion on it at the time that we changed to the ledger.

90 Q. Why was that change made, sir, if you know?

A. The reason for it, I do not know. They just wanted it all in a bound book.

91 Q. There has been some testimony here, I think, by a Government witness that he saw on one occasion a member sign two names—

A. Yes.

92 Q. —his own name and apparently some other name.

A. Yes.

93 Q. Did you ever have any complaints during your three years, as recording secretary, about any instances of that occurring?

A. No, sir.

94 Q. Not a single one?

A. I would not say that it was a complaint. This was mentioned to me one time as a father and son.

In other words, one of the gentlemen had signed for both.

95 Q. Okay.

A. This is the only occasion that I can recall.

96 Q. Who would have called that to your attention, do you recall?

A. No, I do not.

97 Q. Did you verify if that was the truth?

A. As far as verifying, sir, I do not suppose—

98 Q. So you do not know whether that occurred or not?

A. No.

99 Q. Okay.

A. Both of the men generally attended the meetings at the same time.

MR. SERWER: Objection, Your Honor. There has been no showing that this witness has actual knowledge of that occurring.

Your Honor, this is mere speculation and conjecture on his part.

THE COURT: The objection is overruled. That goes to the weight of the evidence.

100 Q. Do you know of your own knowledge, Mr. Witness, how many presidents that Local Union has had in the last ten or twelve years?

A. How many what?

101 Q. Presidents.

A. By "presidents", Mr. Reese, what are you referring to?

102 Q. Presidents of the Local.

A. Oh, presidents of the Local.

It would take a little bit of thinking. I would have to go back—

103 Q. Would these minute books help you?

A. Yes. Sir, they should.

(Whereupon Mr. Reese tendered a document to the witness.) [198]

* * *

[202]

MR. SERWER: Thank you, Your Honor.

THE COURT: Mr. Witness, you may look through those and see if you think those are the Union's records for the last several years.

Mr. Baker, approximately how long do those records cover; how many years?

WITNESS BAKER: Your Honor, the first book goes back to 1963. The first minutes were in May.

THE COURT: Does that look like the same set of books that you have had custody of at one period of time or another?

WITNESS BAKER: Yes, sir.

Your Honor, I can tell because this is my own handwriting (indicating).

THE COURT: As quickly as possible, Mr. Baker, go through those records—

WITNESS BAKER: Yes, Your Honor.

THE COURT: I believe those are the records that Mr. Jet testified to—

WITNESS BAKER: Five or six, Your Honor.

104 Q. Five or six.

MR. REESE: Your Honor, it was five or six.

THE COURT: Mr. Jet testified that there were five or six presidents.

THE COURT: I believe that Mr. Jet testified that there were five or six presidents according to his memory.

How is that?

MR. SERWER: Your Honor, we would agree to that.

THE COURT: All right.

That is what the records show up to this time.

MR. LAWSON: Your Honor, in the interest of time might I ask counsel for the Government if the investigation made by Mr. Shadrach, during the investigation by Mr. Shadrach, if he has any records showing the number of presidents, Your Honor, then we might be able to stipulate to that.

MR. SERWER: Your Honor, I would ask Mr. Shadrach.

Just a moment, Your Honor.

(Whereupon a conference was had among counsel.)

THE COURT: Let the record show that counsel is conferring with Mr. Shadrach.

(Whereupon a conference was had.)

WITNESS BAKER: Your Honor, I think that it is four.

MR. SERWER: Your Honor, I think it is obvious that this witness has absolutely no independent recollection as to how many presidents there have been, or does he have any familiarity with any of the substantial portions of the book that he is leafing through now.

THE COURT: He has been a member of the Local and he has worked for Stran Steel for twenty-five years, and it takes a while to refresh your recollection.

WITNESS BAKER: Your Honor, I show five.

There was a brief period when one of the vice-presidents took over.

THE COURT: Mr. Jet said five or six.

WITNESS BAKER: Yes, five.

THE COURT: Proceed with your questioning, Mr. Reese.

105 Q. So that I understand it, Mr. Witness, that was in the period of the last ten years?

A. Yes, sir.

106 Q. Do you have any recollection as to the number, or how many other officers that they may have had in that Local during the last ten years?

A. No. Sir, this is because they changed at every election. Every office does not change at the same time.

In most elections there were certain officers that did not change.

107 Q. How many officers at each election?

A. You have five top officers, and the Grievance Committee.

108 Q. How many years?

A. Three years.

109 Q. Three on the Grievance Committee?

A. No, three years of officers.

110 Q. No.

How many Grievance Committee members did you elect?

A. Five.

MR. REESE: Your Honor, in order to save time, Your Honor, I wonder if we could not substitute a Labor Department's vertification to submit to His Honor the number of officers that this Local has elected in the last ten years?

I wonder if the Government would verify it by any records that they have?

THE COURT: Exhibit E indicates that in the particular election that is in question, that there were places to vote for fifteen different persons. There were three trustees, five on the Grievance Committee, and seven other officers, Mr. Reese, for a total of fifteen.

There were fifteen persons elected at the June, 1970 election.

Mr. Reese, that shows in the stipulation.

MR. REESE: Thank you, Your Honor.

THE COURT: I think the record is clear that there has been a number of officers elected and there has been a number of changes in the officers.

Mr. Witness, there have been four elections and could you state approximately how many changes there have been?

WITNESS BAKER: Approximately forty.

THE COURT: The Court will accept the estimate.

MR. SERWER: Your Honor, what was the answer?

THE COURT: He said there were approximately forty officers. [206]

* * * *

[210] 123 Q. Thank you.

MR. REESE: Thank you, Your Honor.

No further questions, Your Honor.

THE COURT: Mr. Serwer, you may cross-examine.

MR. SERWER: Thank you, Your Honor.

CROSS-EXAMINATION,

QUESTIONS BY MR. SERWER:

124 Q. Mr. Baker, you have testified that there was a certain number of presidents within the last ten years; is that correct?

A. Yes, sir.

125 Q. Did all of those presidents fill out their terms or did they leave prior to the end of their terms?

A. I think that some left before their terms were over.

126 Q. How many?

A. Possibly two.

127 Q. President Uzzell left before his term was over, did he not?

A. Yes, sir.

128 Q. Was he then impeached and then he resigned?

A. There was a trial hearing—

129 Q. Then did he subsequently resign?

A. Yes, sir.

130 Q. Subsequent to the resignation of any of these presidents within the last ten years: How is a new president put into office?

A. Do you mean—

131 Q. Is he simply appointed into office?

A. Do you mean before the expiration of his term?

132 Q. Yes.

Before the expiration of his term as president—

A. When a president resigns, sir, the vice-president steps up and takes over the office of president.

133 Q. How long does the vice-president remain as president?

A. He serves out the term, or until the next election.

134 Q. How long might that be?

A. I think the bylaws state—I am not quite sure.

I think it has to be close to an election time—

135 Q. So some of the presidents within the past ten years, sir, in fact were men who were not elected to that office?

A. They were elected to an office, but not president.

136 Q. Not elected to president?

A. That is correct.

137 Q. Now, Mr. Baker, you were at the polling place on June 22, 1970; is that correct?

A. If that is the date. [211]

* * * *

[214] Your Honor, can we have that repeated?

THE COURT: He said that they were certainly visible.

154 Q. With regard to the attendance books that you prepared

and kept during the period of June, 1966 to June of 1970: You did keep those books during that time; is that correct?

A. Yes.

155 Q. What appears on those books?

A. The name of the member and the clock number.

156 Q. Are there signatures on that book?

A. Are you referring to the originals? Sir, are you referring to the yellow copy or the book that I have transcribed?

157 Q. The yellow copy contains signatures; is that correct?

A. They do.

158 Q. The transcript contains your handwriting?

A. Correct.

159 Q. And you utilized both of these records in order to prepare the list which contained twenty-two people who had attended eighteen meetings? Sir, is that correct?

A. Yes.

160 Q. What did you use to determine —

A. The books and records that I had transcribed.

MR. LAWSON: I am sorry. Mr. Baker, I cannot hear you.

A. I used the books to transcribe. I used the book to transcribe the information, sir, because they were all clear and uniform.

161 Q. In those books was there any other indication, or any indication if that person had, in fact, attended a meeting? Sir, I am speaking other than the mere existence that his name was in the book.

Was there anything else there that would prove to you that the man, in fact, had attended a meeting on a given date?

A. Only the fact that I transcribed them from his own signature.

162 Q. Did you verify his signature with a signature that was kept on file at the Union?

A. No.

163 Q. It was simply a signature?

A. True.

164 Q. Was there any indication in either of these two sets of records, sir, to show the period of time that a member would spend at a meeting?

A. We do not keep the time that a man attends a Union meeting.

165 Q. Might he have signed and left?

A. It is possible.

166 Q. It is true, sir, is it not that men come in at all times —

A. Well —

167 Q. — late for a Union meeting?

A. That is true.

168 Q. And they can sign at any time during the meeting?

A. When they first come in.

169 Q. That is correct.

If they come in after the beginning of a meeting, sir, then they sign the register?

A. Yes, sir.

170 Q. And they do?

A. Yes.

171 Q. It is a fact, is it not, that men came in at 2:00 and 2:30 for a meeting that began at 1:00 P.M.?

A. Yes. Sir, this is possible.

172 Q. And they have signed the register?

A. Yes.

173 Q. And there is no penalty for doing so?

A. No.

174 Q. Is it similarly true that those records did not contain any indication as to whether a member had left early or not?

A. That is true.

175 Q. In fact, you have done that on occasions, yourself?

A. Yes, sir.

176 Q. Now during the period of time that you were a teller and you observed the conduct of an election at the Union Hall: Did you instruct voters to go to the back room to vote?

A. No.

177 Q. Did you instruct voters to make themselves — strike that.

Did you instruct voters to prevent their ballot from being seen by others?

A. No, sir.

178 Q. There were simply no voter's instructions as to where or how they should vote; is that correct?

A. That is correct.

179 Q. Throughout the day there was conversation; is that correct?

A. Very little.

180 Q. What about the period after 4:00 P.M. in the afternoon?

A. At 4:00 P.M. the men were interested in getting in and voting and getting out to go home.

181 Q. How many men were in the room at that time? [217]

* * * *

[229] CLAY JETT, a witness called by the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. LAWSON:

1 Q. Mr. Jett, are any officers of the Local —

THE COURT: Mr. Witness, you are still under oath.

2 Q. Mr. Jett, are any of the officers of the Local paid for their services as officers?

A. Yes. We do get a salary.

3 Q. Was this true in the 1967 through 1970 period?

A. Yes, sir.

4 Q. Is it true today?

A. Yes, sir.

5 Q. What officers are compensated?

A. The president draws $75.00 a month. The finance officer draws $75.00 a month.

6 Q. Okay.

A. The vice-president draws $35.00 a month, and the shop stewards draw $15.00 a month. I am not quite sure of the figures, but that is close.

7 Q. Is that payment made whether or not they attend the Local Union meetings?

Is there any additional payment made for attending the Local Union meetings?

A. There is no additional for attending the Local Union meetings.

8 Q. Am I correct that there is no payment made to the officers, sir, if the treasury of the Union falls below a certain set figure?

A. There is no payment made if the treasury falls below $3000.00.

9 Q. Has this been true since 1967?

A. No. Sir, this was put into effect a year or so ago.

10 Q. So from 1967 through 1970, sir, the payments were just as you have indicated?

A. Not necessarily. Sometimes during this period the payments were cut out, and at one time it was reduced by a certain amount.

11 Q. What caused that?

A. The finances were getting down low.

12 Q. But there is no payment based upon whether one attends a meeting or not?

A. Right.

13 Q. Right.

A. I am sorry. I believe that the shop foreman has to attend three meetings to be paid.

14 Q. They get $10.00 or $15.00 a month?

A. It is either $10.00 or $15.00. Sir, I cannot [230]

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

No. TH 70-C-117

PETER J. BRENNAN, Secretary of Labor,
United States Department of Labor
(Successor to James D. Hodgson, Resigned)
v.
LOCAL 3489, UNITED STEELWORKERS OF AMERICA,
AFL-CIO
AND
UNITED STEELWORKERS OF AMERICA, AFL-CIO

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, Peter J. Brennan, Secretary of Labor, United States Department of Labor (Successor to James D. Hodgson, Resigned), hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order of the District Court dismissing Plaintiff's Complaint, entered in this action on the 30th day of April, 1974.

Respectfully submitted,

STANLEY B. MILLER
United States Attorney

by: WILLIAM F. THOMPSON
Assistant United States Attorney

Attorneys for Plaintiff

246 Federal Court House
Indianapolis, IN. 46204
317/633-7581